

**NORTH CAROLINA**  
**CHATHAM COUNTY**

**BONUS ALLOCATION**  
**AGREEMENT (R-5930A)**

**THIS BONUS ALLOCATION AGREEMENT (R-5930A)** (“Agreement”), is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **CHATHAM PARK INVESTORS LLC**, a North Carolina limited liability company (“Developer”) and **TOWN OF PITTSBORO**, a North Carolina municipal corporation (“Town”) (each, a “Party” and collectively, the “Parties”).

**RECITALS**

**WHEREAS**, pursuant to the North Carolina Department of Transportation (“DOT”) State Transportation Improvement Program (“STIP”), DOT recognizes local contributions that reduce road construction costs, and DOT reimburses a portion of such local contributions; and

**WHEREAS**, the Chatham Park Planned Development District comprises approximately 7,100 acres of real property located in Chatham County, North Carolina (“Chatham Park”); and

**WHEREAS**, the plan for development of Chatham Park includes the construction of the “Chatham Park Way”, a State road project primarily benefitting the transportation needs of residents and businesses located within the Town and Chatham Park; and

**WHEREAS**, DOT has identified in the STIP the funding for and scheduling of construction of a new approximately 2.336 mile two-lane section of Chatham Park Way that commences at the northern terminus of a previously constructed portion of Chatham Park Way (such terminus being located approximately 1,400 feet north of its intersection with SR 1809 (Suttles Road)) and continues in a northerly direction to the intersection of U.S. Highway 15-501 and SR 1520 (Russell Chapel Church Road) (“Project R-5930”); and

**WHEREAS**, DOT has or is expected to revise the STIP to split Project R-5930 into (i) an approximately 4,600-foot section of Chatham Park Way that commences at the northern terminus of a previously constructed portion of Chatham Park Way (such terminus being located approximately 1,400 feet north of its intersection with SR 1809 (Suttles Road)) and continues in a northerly direction to a point which is located approximately 300 feet north of Grant Drive (“Project R-5930A”), and (ii) an approximately 7,800-foot section of Chatham Park Way that commences at said point located approximately 300 feet north of Grant Drive and continues in a northerly direction to the intersection of U.S. Highway 15-501 and SR 1520 (Russell Chapel Church Road) (“Project R-5930B”); and

**WHEREAS**, the final scope and location of Project R-5930A and Project R-5930B will be based on the STIP, as revised by DOT pursuant to the immediately preceding recital paragraph; and

**WHEREAS**, all of the property on which Project R-5930A is to be constructed (the “Property”) is owned by Developer and 15-501 East LLC, a North Carolina limited liability company, an affiliate of the Developer (“Developer Affiliate”); and

**WHEREAS**, the Property is currently situated within Chatham County Tax Parcels 69490, 7474, 78535, 95381 and 75037, and will be more particularly described using the legal descriptions derived from the Property Subdivision (as defined below); and

**WHEREAS**, the Property owned by Developer shall hereinafter be referred to as the “Developer Property”, and the Property owned by Developer Affiliate shall hereinafter be referred to as the “Developer Affiliate Property”; and

**WHEREAS**, in connection with Project R-5930A, Developer will (i) cause the Property to be surveyed, subdivided and/or platted (the “Property Subdivision”), (ii) convey or otherwise transfer the Developer Property to the Town, who will then dedicate or convey the Developer Property to DOT as a public right of way for the benefit of Project R-5930A, and (iii) cause the Developer Affiliate to convey or otherwise transfer the Developer Affiliate Property to the Town, who will then dedicate or convey the Developer Affiliate Property to DOT as a public right of way for the benefit of Project R-5930A (collectively, the “Chatham Park Way Dedication”); and

**WHEREAS**, though the local government contribution value of the Chatham Park Way Dedication is currently estimated to be \$2,000,000.00, the actual local government contribution value of the Chatham Park Way Dedication (the “Chatham Park Way Dedication Value”) will be mutually agreed upon by DOT, Developer and Developer Affiliate, based on an appraisal of the Property performed on behalf of Developer and/or Developer Affiliate by an appraiser that (i) is approved by DOT, and (ii) complies with all applicable DOT requirements and standards in its appraisal of the Property; and

**WHEREAS**, Developer has committed to provide funding (in one or more installments) through the Town to DOT (the “Chatham Park Way Contribution”) for the construction of Project R-5930 in an amount equal to the difference between \$9,000,000.00 and the Chatham Park Way Dedication Value; and

**WHEREAS**, DOT has determined, that the Chatham Park Way Dedication and Chatham Park Way Contribution will qualify as local government funding participation for Project R-5930A pursuant to Section 136-189.11(f) of the North Carolina General Statutes; and

**WHEREAS**, pursuant to Section 136-189.11(f) of the North Carolina General Statutes, the total DOT bonus allocation amount for the Chatham Park Way Dedication and Chatham Park Way Contribution that the Town will be eligible for is \$4,500,000.00 (“Bonus Allocation”); and

**WHEREAS**, the Developer and Town desire (i) to cooperate with each other to satisfy the requirements for the Town’s local government funding participation for the Chatham Park Way Dedication and Chatham Park Way Contribution, and (ii) for the Town to obtain or otherwise be entitled to the Bonus Allocation, and utilize the same to reimburse Developer, in accordance with applicable law, for its right of way acquisition and construction costs (“Additional Road Expenses”) incurred with respect to the Additional Road(s) (as defined below); and

**WHEREAS**, subject to the provisions of applicable law and regulations, the Town and Developer agree to apply the full amount of the Bonus Allocation towards payment of the Additional Road Expenses; and

**WHEREAS**, the Town’s Board of Commissioners (“Town Board”) by Resolution adopted at a regular meeting of the Town Board on \_\_\_\_\_, 20\_\_ directed and authorized the Mayor and Town Clerk to execute, acknowledge and deliver this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**THE AGREEMENT**

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Developer and Town Obligations to Cause the Chatham Park Way Dedication and Chatham Park Way Contribution.**

(a) In connection with the Chatham Park Way Dedication, and in consideration of the applicable portion of the Bonus Allocation, Developer and Developer Affiliate shall convey the Property to the Town by special warranty deed in customary North Carolina form, subject to all applicable title exceptions. Within thirty (30) days after receiving said conveyance of the Property from Developer, the Town agrees to, in the manner determined by DOT, convey fee simple title or dedicate an easement for the Chatham Park Way Dedication to DOT as a public right of way. In connection with the foregoing, the Town also agrees to submit all forms and applications required by DOT to effectuate the conveyance or easement dedication of the Chatham Park Way Dedication to DOT as a public road.

(b) In connection with the Chatham Park Way Contribution, and in consideration of the applicable portion of the Bonus Allocation, Developer shall pay the Chatham Park Way Contribution to the Town in accordance with a funding schedule determined by DOT (the “Funding Schedule”), and each installment of the Chatham Park Way Contribution must be paid by Developer to the Town by wire transfer of immediately available funds no later than the date that is five (5) days prior to the date such funds are required to be delivered to DOT pursuant to the Funding Schedule. The Town shall promptly (and in all events within three (3) business days of receipt) submit each installment of the Chatham Park Way Contribution it receives from Developer to DOT in accordance with DOT’s written directives and standard procedures.

(c) The Parties agree and acknowledge that DOT has established the following general timeline (which shall be considered the Funding Schedule unless/until revised by DOT) for the Chatham Park Way Dedication and Chatham Park Way Contribution:

- (i) Chatham Park Way Dedication and first installment of the Chatham Park Way Contribution in the amount of \$1,000,000 to be received by DOT on or before February 1, 2023.
- (ii) Balance of Chatham Park Way Contribution to be received by DOT on or before June 30, 2023.

3. **Additional Road.** The Town and Developer agree that the Bonus Allocation is to be used only for Additional Road Expenses, in accordance with the terms and conditions of this

Agreement. The Parties agree that Developer shall be responsible for selecting one or more highway/road projects that, in Developer's reasonable discretion, (i) serve the Town (as referenced in Section 136-189.11(f)(2) of the North Carolina General Statutes) and (ii) provide a material benefit to Developer (each, an "Additional Road", and collectively, "Additional Roads"). Developer shall identify Additional Road(s) by providing written notice to the Town of the same, and the Town agrees to promptly take all reasonable and legally permitted action requested by Developer or DOT to ensure that such Additional Road(s) are part of the Town's Comprehensive Transportation Plan, applicable small area plan, or other similar locally adopted plan that satisfies the applicable statutory and DOT policy/procedural requirements for the Additional Road Expenses applicable to such Additional Road(s) to be eligible for reimbursement through the Bonus Allocation. Following Developer's selection of an Additional Road and DOT's written confirmation that the same is eligible for reimbursement through the Bonus Allocation, Developer agrees to (i) acquire and/or convey, as applicable, any right of way required for such Additional Road in a manner mutually determined by the Developer, the Town and DOT (and the Town agrees to cooperate and take all reasonable action necessary in connection with the same), and (ii) construct such Additional Road in a manner mutually determined by the Developer and DOT. For purposes of clarification, Additional Roads shall be located on property that is owned, controlled or acquired by Developer, or on property that is otherwise approved by the Town.

4. **Additional Road Expenses.** Developer shall deliver evidence of the Additional Road Expenses to the Town in such form, if any, as required by DOT for disbursement to the Town of the Bonus Allocation (or applicable portion thereof) for such Additional Road Expenses. As soon as reasonably practicable after the Town receives from Developer such evidence of the Additional Road Expenses, the Town shall request disbursement from DOT of the Bonus Allocation (or applicable portion thereof) for those Additional Road Expenses.

5. **Obligation of Town to Disburse Bonus Allocation.** The Town agrees to promptly disburse to Developer the full amount of any Bonus Allocation received by the Town for Additional Road Expenses incurred by Developer as provided by law and in compliance with the terms of any agreement entered into between the Town and DOT that is approved by Developer.

6. **Town Administrative Fee.** Developer hereby agrees to reimburse the Town for its reasonable administrative and management costs related to this Agreement. All such costs shall be based on a reasonable individual hourly rate agreed to by the Parties for each Town employee, and the Town shall provide Developer with a monthly invoice evidencing such costs and requesting payment for the same, which shall be paid within thirty (30) days of Developer's receipt and approval of the same.

7. **Indemnification.** Except for any loss or expense stemming from the Town's gross negligence or willful misconduct, the Developer agrees to indemnify, defend and hold harmless the Town for any loss, cost or damages, including reasonable attorney's fees, that the Town may incur arising from Developer's negligence, willful misconduct or material breach of this Agreement, including, but not limited to the accuracy of the Additional Road Expenses provided by the Developer, but excluding any of the Bonus Allocation received by the Town and disbursed to Developer in accordance with this Agreement.

8. **Amendment and Modification.** This Agreement may not be amended or modified except by the mutual written consent of the Parties.

9. **Notice.** All notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, sent via e-mail at the address designated below, or sent by certified United States mail, postage prepaid, with return receipt requested, addressed to the Parties as follows:

**DEVELOPER:**

Chatham Park Investors LLC  
Attn: Mr. Timothy R. Smith  
105 Weston Estates Way  
Cary, NC 27513  
Telephone: 919-481-3000  
Email: [tim@prestondev.com](mailto:tim@prestondev.com)

with a copy to:

Wyrick, Robbins, Yates & Ponton LLP  
Attn: Eric A. Vernon  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
Telephone: 919-865-1113  
Email: [evernon@wyrick.com](mailto:evernon@wyrick.com)

and with a copy to:

Morris Eagle Law PLLC  
Attn: Kenneth L. Eagle  
105 Weston Estates Way  
Cary, NC 27513  
Telephone: 919-645-4311  
Email: [ken@morriseagle.com](mailto:ken@morriseagle.com)

**TOWN:**

Town of Pittsboro  
Attn: Hazen Blodgett, Interim Town Manager  
635 East Street  
Pittsboro, NC 27312  
Telephone: 919-542-4621 ext 1105  
Email: [hblodgett@pittsboronc.gov](mailto:hblodgett@pittsboronc.gov)

with a copy to:

Gunn & Messick PLLC  
Attn: Paul S. Messick, Jr.  
90 W. Salisbury Street  
Pittsboro, NC 27312  
Telephone: 919-542-3253  
Email: [pm@gunnmessick.com](mailto:pm@gunnmessick.com)

10. **Agreement to Cooperate.** The Parties acknowledge and agree to cooperate and take such actions as are reasonably necessary to cause to occur the transactions set out in this Agreement. Developer acknowledges and agrees that it is solely responsible for the preparation of and delivery to the Town of (i) all studies, submittals or applications required by DOT to determine eligibility for the Bonus Allocation (or any portion thereof), except for the Town's actual applications to request the Bonus Allocation (or any portion thereof), and (ii) itemized invoices and proof of payment for the Additional Road Expenses for which Developer requests the Town to obtain the Bonus Allocation (or any portion thereof) for disbursement to Developer.

11. **Headings.** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

12. **Controlling Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

13. **Relationship of the Parties.** The Developer shall be an independent contractor of the Town. Nothing herein shall be construed as creating a partnership or joint venture nor shall any employee of Developer be construed as an employee, agent or principal of the Town.

END OF PAGE; EXECUTION PAGE FOLLOWS

**IN WITNESS WHEREOF**, the Parties have hereto executed this Agreement on the dates indicated with their respective signatures, and such date, or the later of such dates if not executed on the same date, shall be the date of execution and inserted in the first paragraph hereof (but shall be the date of execution even if incorrectly inserted in the first paragraph hereof).

**CHATHAM PARK INVESTORS LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Town Clerk

**TOWN OF PITTSBORO,**  
a North Carolina municipal corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

(affix Town seal here)