

NORTH CAROLINA
CHATHAM COUNTY

**FIRST AMENDMENT TO BONUS
ALLOCATION AGREEMENT**

THIS FIRST AMENDMENT TO BONUS ALLOCATION AGREEMENT (this “Amendment”), 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, the Parties entered into that certain Bonus Allocation Agreement dated August 10, 2020 (the “Existing Agreement”) concerning Developer’s conveyance of the Property to the North Carolina Department of Transportation (“DOT”) as public right of way (the “Chatham Park Way Dedication”) and the Chatham Park Way Bonus Allocation;

WHEREAS, as set forth in the Existing Agreement, the local government contribution value of the Chatham Park Way Dedication, as determined by DOT, equaled \$3,922,632,000 and, pursuant to Section 136-189.11(f) of the North Carolina General Statutes, the amount of the Chatham Park Way Bonus Allocation is \$1,961,316 (“Chatham Park Way Bonus Allocation”);

WHEREAS, pursuant to the Existing Agreement, the Town agreed to reimburse Developer for its costs incurred with respect to constructing Additional Road(s) that are (i) in the Town’s Comprehensive Transportation Plan and (ii) mutually agreed on by the Developer and Town;

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 Amendment; and

WHEREAS, the Parties desire to amend the terms of the Existing Agreement relating to Additional Road selection/construction, Additional Road Expenses, and disbursement of the Chatham Park Way Bonus Allocation, all in accordance with the terms and conditions more specifically set forth below.

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 to amend the Existing Agreement in accordance with the following:

1. **Recitals/Defined Terms.** The foregoing recitals are true and correct and are incorporated herein by reference, and all capitalized terms not otherwise defined herein shall have the meanings set forth in the Existing Agreement.

2. **Additional Roads.** With respect to Additional Roads, and notwithstanding anything to the contrary in the Existing Agreement:

(a) The Parties agree that Developer shall have the right and responsibility to select the Additional Road, and such selection shall not be subject to the review or approval of the Town; provided, however, that the Additional Road shall: (i) in Developer's reasonable discretion, serve the Town (as referenced in Section 136-189.11(f)(2) of the North Carolina General Statutes) and provide a material benefit to Developer; and (ii) be located on property that is owned, controlled or acquired by Developer, or on property that is otherwise approved by the Town;

(b) 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 Chatham Park Way Bonus Allocation;

(c) Following Developer's selection of an Additional Road and DOT's written confirmation that the same is eligible for reimbursement through the Chatham Park Way Bonus Allocation, Developer agrees to, in exchange for just compensation as agreed upon pursuant to applicable law and standard DOT policies and procedures, convey to DOT any right of way required for such Additional Road in a manner mutually determined by Developer, the Town and DOT (and the Town agrees to cooperate and take all reasonable action necessary in connection with the same); and

(d) Developer or DOT (as applicable, and as determined by Developer, the "Constructing Party") shall construct the Additional Road(s) in a manner mutually determined by Developer and DOT.

3. **Additional Road Expenses.** With respect to Additional Road Expenses, and notwithstanding anything to the contrary in the Existing Agreement:

(a) If Developer is the Constructing Party:

(i) 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 Chatham Park Way Bonus Allocation (or applicable portion thereof) for such Additional Road Expenses.

(ii) 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 Chatham Park Way Bonus Allocation (or applicable portion thereof) for those Additional Road Expenses.

(iii) The Town agrees to promptly disburse to Developer the full amount of any Chatham Park Way 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.

(b) If DOT is the Constructing Party, the Town agrees to cooperate with DOT and Developer to allow for the full amount of the Chatham Park Way Bonus Allocation received by or credited to the Town to be applied to the Additional Road Expenses incurred by DOT pursuant to applicable law and standard DOT policies and procedures.

(c) For clarification, the Additional Road Expenses shall include all costs incurred by the Constructing Party in connection with right of way acquisition/conveyance for the Additional Road (e.g., realty appraisals, surveys, attorneys' fees, title search costs, closing costs, and if applicable, the just compensation for the Property that is agreed upon pursuant to applicable law and standard DOT policies and procedures).

4. **Town Administrative Fee.** Developer hereby agrees to reimburse the Town for its reasonable administrative and management costs related to its obligations under the Existing Agreement, as affected by this Amendment. 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.

5. **Notice.** The notice addresses of the Town in the Existing Agreement are hereby removed and replaced with the below, and the notice addresses of a Party may be changed by such Party providing the other Party written notice of the same.

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

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

6. **Conflict.** In the event of a conflict between any provisions contained in the Existing Agreement and this Amendment, the terms contained in this Amendment shall control and govern the parties and their respective rights and duties. Except as specifically amended by this Amendment, the Existing Agreement shall remain unchanged and in full force and effect, and all other provisions of the Existing Agreement are hereby restated and reaffirmed in their entirety.

END OF PAGE; EXECUTION PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have hereto executed this Amendment 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

(affix Town seal here)

TOWN OF PITTSBORO,
a North Carolina municipal corporation
By: _____
Name: _____
Title: Mayor