

NCGI Wastewater Participation Agreement

AGREEMENT

by and between

NORTH CHATHAM GREEN INITIATIVE, LLC

and

HBP PROPERTIES, LLC

for the participation in the

North Chatham Green Initiative Wastewater Disposal System

Chatham County, North Carolina

September 25, 2006

AGREEMENT

This Agreement for the providing of wastewater access serving the Polks Centre Development (“**Agreement**”) is made as of the 25th day of September 2006, by and between NORTH CHATHAM GREEN INITIATIVE, LLC (NCGI), a NC limited liability company (“NCGI”), and HBP Properties, LLC (HBP), a NC limited liability company (collectively the “**Parties**”).

WITNESSETH:

THAT WHEREAS, NCGI intends to install a Wastewater Utility System to provide wastewater to all sections of Polks Centre Development (Polks Centre) and NCGI’s other associated developments.

WHEREAS, the Parties have agreed, that HBP will pay [REDACTED] as per the attached payment schedule for the approximately 50,000 gallons per day required by the Polks Centre development. HBP will also transfer property and access to areas and components as needed by NCGI or the Operator as required for the construction and operation of the North Chatham Green Initiative Wastewater Disposal System.

1. REPRESENTATIONS AND WARRANTIES OF NCGI

NCGI hereby represents and warrants as follows:

1.1. Organization; Good Standing; Power. NCGI is a NC corporation duly organized, validly existing, and in good standing under the laws of the state of North Carolina and has all the requisite power and authority to own, lease, and operate its properties, to carry on its business as now being conducted and to enter into this Agreement and perform its obligations hereunder.

1.2. Authority Relative to Agreement. The execution, delivery and performance of this Agreement by NCGI have been duly and effectively authorized by all necessary action. This Agreement has been duly executed by NCGI and is a valid and legally binding obligation of NCGI enforceable in accordance with its terms except (i) as limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally, (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (ii) to the extent the indemnification provisions may be limited by applicable federal or state securities laws.

1.3. Effect of Agreement. The execution, delivery and performance of this Agreement by NCGI and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority other than the NCDWQ, (ii) violate, with or without the giving of notice or the passage of time or both, any provisions of law now applicable to NCGI, or (iii) result in a violation of NCGI’s charter or bylaws.

2. REPRESENTATIONS AND WARRANTIES OF HBP

HBP hereby represents and warrants as follows:

2.1. Organization; Good Standing; Power. HBP is a corporation duly organized, validly existing and in good standing under the laws of the state of South Carolina, is authorized to do business in North Carolina, and has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to enter into this Agreement and perform its obligations hereunder.

2.2. Authority Relative to Agreement. The execution, delivery and performance of this Agreement by HBP have been duly and effectively authorized by all necessary corporate action. This Agreement has been duly executed by HBP and is a valid and legally binding obligation of HBP enforceable in accordance with its terms except (i) as limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (ii) to the extent the indemnification provisions may be limited by applicable federal or state securities laws.

2.3. Effect of Agreement. The execution, delivery, and performance of this Agreement by HBP and the consummation of the transactions contemplated hereby will not (i) require the consent, approval, or authorization of any person, corporation, partnership, joint venture, or other business association or public authority other than the NCDWQ, (ii) violate, with or without the giving of notice or the passage of time or both, any provisions of law now applicable to HBP, or (iii) result in a violation of HBP charter or bylaws.

3. OPERATION OF THE WASTEWATER UTILITY SYSTEM ASSETS

3.1. Permitted Operator. Operation of the Wastewater Utility System shall be preformed by an entity permitted by the NC Utilities Commission and additionally qualified as needed to offer such services in North Carolina to NCGI and its users. (Herein the Operator)

3.2. Connection Fee. HBP agrees that it shall not collect any wastewater connection fees from the customers at Polks Centre. Connection fees will be collected if necessary by NCGI or the Operator. Connection fees will be collected to pay for the connection of a business, building or facility to the system.

3.3. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be sent either (i) personally by hand delivery, (ii) by registered or certified United States first-class mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight courier, (iv) by facsimile addressed to the address or facsimile number indicated below (or at such other address or facsimile number as such Party or permitted assignee shall have furnished to the other Parties hereto in writing) or verified email. All such notices and other written communications shall be effective on the date of delivery.

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4. Participation

4.1. HBP shall pay a sum [REDACTED] for access to 50,000 GPD or capacity to meet the requirements of its development as planned, whichever is less. [REDACTED] is due upon the execution of this agreement and an "Irrevocable Letter of Credit" or similar guarantee shall be provided for the remainder of the funds.

4.2. HBP will be allowed to use any excess capacity at Legend Oaks as long as this use adheres to the agreement between NCGI and Legend Oaks and meets all regulatory requirements.

4.3. The access payment covers all cost for Polks Centre's proportional cost of the plant and permitting and bringing sewer connections to the site. The permitting and construction of Polks Centre's collection and disposal system will be at the cost of HBP.

4.4. Future needs of HBP above 50,000 GPD will be provided at the cost to provide such capacity or current cost to the participants, whichever is greater.

4.5. HBP will provide all property transfers, leases, easements or assets necessary for the construction and function of the components necessary for disposal of effluent from HBP use. The transfer of the property for the system shall be made immediately upon execution of this document to NCGI or the Operator and recorded in Chatham County or as required by the Operator. The attached property description is provided to identify the areas necessary for disposal.

4.6. Tap fees charge to tenants of HBP will be set to recover the actually cost of connecting the tenants to the system.

4.7. During operation of the charges for services will be charged by the Operator to facilities in Polks Centre. Current regulated charges are provided in Attachment C.

4.6 HBP agrees to meet all conditions of the negotiated contract between NCGI and the Operator as long as it does not require additional payments not mutually agreed to in advance.

4.7 Participation in this system automatically grants participation in the other components of the NCGI developments and membership in the NCGI, LLC. These include solar cost support, evaporative cooling systems, recycled wastewater cost support and membership of all property owners in any recreation and clubhouse facilities.

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If to NCGI, such notice shall be addressed to:

North Chatham Green Initiative, LLC
Attn: Manager, M. Travis Blake
10700 Hwy 15-501
Chapel Hill, NC 27517
Telephone: (919) 969-8848
Facsimile: (866) 889-0795

If to HBP, such notice shall be addressed to:

HBP Chatham, LLC
Attn: Manager, Brantley Powell
2110 1010 Road
Apex, NC
Business Phone: (919) 387-2929
Facsimile: (919) 387-7357

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[Signature Page to Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in their respective names, all by authority duly given, the day and year first above written.

NORTH CHATHAM GREEN INITIATIVE, LLC

By: _____

HBP PROPERTIES, LLC

By: _____
