

**PIN # 9870907548**

**Drafted by/Return to: Ralph D. Karpinos  
Town of Chapel Hill  
405 Martin Luther King Jr. Blvd.  
Chapel Hill, NC 27516**

**NORTH CAROLINA**

**ORANGE COUNTY**

**AGREEMENT REGARDING**

**THE PROVISION OF AFFORDABLE HOUSING AND/OR FUNDING TO THE TOWN OF CHAPEL HILL FOR AFFORDABLE HOUSING IN ACCORDANCE WITH A PROPOSED REZONING AND SPECIAL USE PERMIT**

This Agreement is made and entered into between \_\_\_\_\_ the Undersigned owner and applicant for conditional use rezoning of the property identified herein and the Town of Chapel Hill, a North Carolina Municipal Corporation. This Agreement is executed for the purpose of documenting that the parties hereto, for themselves, their successors and assigns, agree that the commitments made herein represent a voluntary exchange of sufficient consideration to bind the parties and their successors, heirs and assigns.

**WITNESSETH:**

WHEREAS, the Charter of the Town of Chapel Hill allows the Town to grant a density bonus to a developer of housing within the Town if the developer agrees to construct a percentage, as set out in the Charter, of a proposed housing development for persons of low or moderate income; and

WHEREAS, the Town of Chapel Hill Town Council has an adopted policy (see Resolution 2000-03-06/R-4, as modified by Resolution 2009-01-26/R-7) (the Policy) which provides that when an application for rezoning is submitted the Council has an expectation that the applicant will provide a percentage of affordable housing in the increased density allowed by rezoning; and

WHEREAS, the Parties agree that the Policy was adopted pursuant to valid legislative authority granted by the North Carolina General Assembly and constitutes a part of the Town's Comprehensive Plan; and

WHEREAS, the Undersigned owner has applied to the Town of Chapel Hill for conditional use rezoning of property identified as Orange County Parcel Identifier Number 9870907548 (the Property ) which, if granted by the Town Council, will increase the permitted density of residential development on the Property and enhance its fair market value; and

WHEREAS, pursuant to N.C.G. S. Sec. 160A-382(b), conditions may be proposed and agreed to by the Town and the property owner in conditional use rezonings which address the conformance of a development and use of property to an officially adopted comprehensive plan; and

WHEREAS, the Undersigned owner acknowledges and accepts that he is receiving a density bonus by way of the rezoning of his property in exchange for his agreement to provide the affordable housing on site and / or the payment in lieu thereof to assist the Town in providing affordable housing elsewhere within the Town;

WHEREAS, the Undersigned, as an alternative to directly meeting the Policy expectation of providing affordable housing on the site of the Property for which the rezoning is being requested, has voluntarily proposed to the Town Council to make a payment to the Town's Affordable Housing Fund, which would be used by the Town to provide further opportunities for affordable housing in accordance with the Guidelines for Use of the Affordable Housing Fund adopted by the Chapel Hill Town Council in Resolution 2014-09029/R-8; and

WHEREAS, the Parties agree that this alternative, voluntary provision of funding for affordable housing is consistent with the Policy; indirectly meets the requirements for which the Town may grant a density bonus; and is an acceptable and voluntarily accepted method of achieving the goals of the Policy in exchange for the density bonus to be provided as a result of the requested rezoning; and

WHEREAS, the Council has determined that the offer of the owner to make the payment to the Town's Affordable Housing Fund as an alternative to providing affordable housing on site fairly and reasonably helps to achieve the Town's affordable housing goals, as reflected in the Town's Comprehensive Plan, to develop and preserve affordable housing opportunities in Chapel Hill and the Council commits to using said funds provided to increase opportunities for affordable housing.

NOW THEREFORE the Undersigned owner and the Town agree as follows:

1. The Town's Policy on proposed residential rezonings includes an expectation of the Town, when considering a rezoning request to increase residential density, that an affordable housing component will be included. Under the Policy a payment may be offered, to be used for affordable housing, by an applicant as a substitute to the provision of the units on site and that said offer may be considered and accepted by the Town Council.
2. The Undersigned owner for development of the Property for himself , and his successors, heirs and assigns hereby voluntarily offers and agrees to make a contribution to the Town's Affordable Housing Fund in the amount of \$ \_\_\_\_\_ to be used by the Town to develop and preserve the Town's affordable housing programs.
3. The Undersigned owner of the Property for himself and his successors, heirs and assigns hereby voluntarily offers and agrees to provide, on site, \_\_\_ units of affordable housing in accordance with an Affordable Housing Plan consistent with the Town's Guidelines to be developed and agreed to by the Developer of the property and the Town Manager prior to

issuance of a zoning compliance permit for development of the property. The Affordable Housing Plan will address the number of housing units to be designated as affordable, the amount by which the rent of these units will be subsidized, the length of time which these units will be provided at the reduced rental rate, and the requirements for reporting to the Town on the status of these units.

4. The Undersigned further acknowledges that, as a voluntary offer, this proposed contribution is not an exaction of a monetary fee, contribution or tax which is subject to being returned pursuant to G.S. Sec. 160A-363(e). The Undersigned, for himself, his heirs, successors and assigns, waives any and all claims for any return or refund of said voluntarily payment; and acknowledges that the Town has been induced to act to rezone said Property in part by the proposed payment for affordable housing; acknowledges that the Undersigned has received, by this rezoning, a discretionary legislative action and increase in development opportunities to which it is not automatically entitled to in consideration, in part, for this voluntary offer; and that by agreeing to these terms and receiving the benefits of greater development density resulting from the herein referenced rezoning, agrees that he and his successors and assigns, including parties who may purchase the Property with the entitlements provided by the rezoning are equitably and legally estopped from subsequently seeking repayment from the Town of funds provided.
5. The Town finds that the amount offered and the units provided on site by the owner in this specific case and based on the specific circumstances involved in this application, meets the objectives and intent of the Policy and accepts said amount in lieu of the provision, and provision of, an affordable housing component being included on site in the proposed development associated with the rezoning and by meeting a policy objective of the Town Council supports a decision by the Council to exercise its Legislative authority to rezone the property. The Town further agrees that said funds shall be used to create and preserve affordable housing opportunities within its jurisdiction.
6. A copy of this agreement shall be recorded as an attachment to the Special Use Permit accompanying the rezoning application and incorporated as a part thereof.

IN WITNESS WHEREOF, the Town of Chapel Hill and the Undersigned owner have executed this Agreement Regarding the Provision of Funding to the Town of Chapel Hill For Affordable Housing this the \_\_\_ day of \_\_\_, 20\_\_.

**Name:** \_\_\_\_\_  
Owner

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, a Notary Public of the State of \_\_\_\_\_ and County of \_\_\_\_\_, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_, and that he/she as \_\_\_\_\_ of \_\_\_\_\_, being authorized to do so, executed the foregoing on behalf of \_\_\_\_\_.

WITNESS my hand and official stamp (or seal) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public (Seal)

\_\_\_\_\_  
Notary's Name, Printed or Typed

My commission expires: \_\_\_\_\_

DRAFT

**TOWN OF CHAPEL HILL**

BY: \_\_\_\_\_  
Maurice T. Jones, Town Manager

*ATTEST*

\_\_\_\_\_  
Town Clerk (TOWN SEAL)

Approved as to form and authorization: \_\_\_\_\_  
Town Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director Date

NORTH CAROLINA

ORANGE COUNTY

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that she is the (acting) Town Clerk of the Town of Chapel Hill, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by \_\_\_\_\_, its \_\_\_\_\_, sealed with its corporate seal and attested by her as its (acting) Town Clerk.

WITNESS my hand and official stamp (or seal), this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public (Seal)

\_\_\_\_\_  
Notary's Name, Printed or Typed

My commission expires: \_\_\_\_\_