

AQUA WSIP REBUTTAL EXHIBIT 8  
CHAPEL RIDGE BULK WATER AGREEMENT  
W-218 SUB 573

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STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this the 14<sup>th</sup> day of October, 2002, by and between the TOWN OF PITTSBORO, a municipal corporation chartered by the State of North Carolina, and located in Chatham County, North Carolina (hereinafter referred to as the "Town"), and CHATHAM PARTNERS LLC, a limited liability company and POLK-SULLIVAN LLC, a limited liability company, both organized under the laws of the State of North Carolina, and located in North Carolina and its successors and assigns (hereinafter referred to collectively as "LLC").

WITNESSETH:

WHEREAS, the Town operates a water system, and presently has a surplus of treated water, and is willing to furnish to LLC a portion of said surplus water upon the terms and conditions hereinafter set forth in order to enhance the Town's distribution system; and

WHEREAS, the LLC is willing to obligate itself to purchase a minimum amount of water per month and desires to purchase water from the Town upon the terms and conditions set forth:

NOW, THEREFORE, in consideration of the premises, the mutual promises herein contained, and other good and valuable consideration, the parties agree that upon request of LLC and approval of the Town, the Town agrees to provide water to LLC for use in a residential development and ancillary commercial uses in connection therewith upon the terms and conditions herein contained.

1. The Town agrees to furnish to LLC at a point of delivery located at the southern property line of LLC on Old Highway 87, in Chatham County, North Carolina, as shown on the map attached as Exhibit A (the "Point of Delivery") a quantity of potable treated water, satisfying applicable purity standards of North Carolina Division of Environmental Health at an approximately constant, normal gravity pressure, based upon a minimum elevated storage level of 550 feet above sea level for supply at the Point of Delivery, and in general provide the same level of service and maintenance to the Point of Delivery as the Town provides to users in the corporate limits of the Town subject to the availability of water due to, reductions or failures of pressure or supply due to main supply line breaks, power failures, floods, fire and the use of water to fight fire, earthquakes, water conservation measures and other causes beyond the Town's control for such reasonable period of time as may be necessary to restore normal service.

2. The Town agrees to furnish LLC the amount necessary to serve the needs of 1510 residential customers, two swimming pools, two clubhouses with golf pro shops and related golf maintenance facilities, two bath houses and one river clubhouse in the same manner it serves the water needs of its in-city residential and (as applicable) commercial customers. LLC would anticipate needing sufficient water to serve the needs of 150 new residential customers each year, cumulative, beginning in 2004. Upon completion of the extension of the Town's water system to the Point of Delivery including, without limitation, the acquisition, design, engineering,

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construction, and installation of a master meter, waterlines, pumps, valves, easements, and rights in land necessary. (hereinafter referred to as the "Project") . the Town will bill and LLC will pay for a minimum quantity of 500,000 gallons per month or 2,000 gallons per month per connection in the LLC development, whichever is greater, regardless of actual use.

3. Upon completion and acceptance by the Town, LLC shall grant and convey to the Town without monetary consideration the improvements constructed by it in the Project. LLC shall complete installation of the "Project" prior to December 31, 2004.

4. Town shall be under no obligation to reimburse LLC for costs incurred by it in building the Project ,except as set forth in Section 9(f)hereof.

5. LLC shall pay the Town for all water furnished and delivered pursuant to this agreement according to the usual and customary out-of-town rates as determined from time to time by the Town, but not more than twice its usual and customary in-town rates; provided, however, this section shall in no way be construed as limiting the minimum charge provided in Section 2 hereof. Upon completion of the waterline and master meter, the Town will bill LLC monthly for the actual amount of water sold and delivered to it at the then applicable rate.

6. The Town agrees to maintain at the Point of Delivery, the metering equipment necessary to accurately measure the water furnished and delivered to LLC, and upon the written request of LLC, the Town will calibrate, at the expense of LLC, the metering equipment not more frequently than once in every twelve (12) month period in accordance with Town's policy. If such calibration does not register an error of more than two percent (2%) above or below the test reading, the meter shall be deemed to be accurate. If the meter registers an error of more than two percent (2%) above or below the test reading, then the Town shall adjust its bill accordingly for the previous one (1) month only. If the meter fails to register during any monthly period, then the amount of water sold and delivered during such period shall be deemed to be the average monthly quantity delivered during the preceding twelve (12) months.

7. The Town shall have the right to approve all design plans and specifications for the Project prior to solicitation of bids and award of any contract by LLC. Town shall also have the right to approve any contract proposed to be entered by LLC in connection with the Project, which approval shall not be unreasonably withheld. Action by the Town shall be taken within 15 days of receipt of a request for approval by LLC . Contracts not approved by the Town shall not be entitled to be credited against the Access Fee to be paid by LLC. In no event shall the Town pay the LLC or give it credit in any amount in excess of the Access Fee. The exact Point of Delivery of the water from the Town to LLC shall be generally as shown on Exhibit A with the exact location to be jointly agreed upon by the parties, and as shown on plans prepared by LLC's engineers. LLC specifically agrees to the following conditions:

- (a) The Town shall have the right to interrupt delivery of water to LLC or to take any legal action that the Town deems necessary upon the happening of any one or more of these events:
  - (i) If LLC shall fail to pay its monthly water on the date it is due and fails to cure such failure within five (5) days after receiving written

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notice thereof from the Town in accordance with Section 10 hereof;

- (ii) If emergencies shall occur affecting the availability of water, including but not limited to, main supply line breaks, power failures, floods, fires, earthquakes, required water conservation measures but only to the extent also applied on a non-discriminatory basis to all of the Town's in-city residential customers (or as applicable to the ancillary commercial uses, its commercial customers), and other causes beyond the control of Town, so as to require the use of said water elsewhere or to prevent its delivery to LLC;
  - (iii) If LLC shall default with respect to any other provision of this agreement or any joint operating agreement subsequently approved by the parties and shall fail to cure such default within thirty (30) days after receiving written notice from the Town in accordance with Section 10 hereof; provided however, if such default can not reasonably be cured within such thirty (30) day period, LLC shall not be in default if it commences such cure within the thirty (30) day period and diligently completes the cure as soon as reasonably possible.
- (b) In the event of a line break which occurs on the Project side of the master meter installed at the Point of Delivery, the Town shall have the right, but not the obligation, to shut off the water supply at the master meter if the LLC (or its permitted assignee) does not isolate and shut off the break within the Project or repair the break within a reasonable amount of time after the discovery of the break in the line.
  - (c) LLC shall bear all of the costs in connection with the Project. In order to assure that the Project is constructed and installed in accordance with the policies, standards and specifications of the Town, the Town shall have the right to inspect all work done prior to acceptance. Acceptance will be conditioned upon a one year warranty by LLC. The Town shall have the right to approve the plans and specifications before bids are solicited or award of contract by LLC.
  - (d) LLC shall not use, nor shall it permit any of its customers to use, any water from a second or backup source for potable water purposes. Water furnished hereunder to LLC shall only be sold or furnished to the property now owned by LLC and/or owned by the LLC in the future. None of the water supplied by the Town shall be used for golf course irrigation except with the prior written consent of the Town which the Town may provide or withhold in its absolute sole discretion.

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- (e) LLC shall furnish and operate, at its own expense, adequate pumps and equipment to operate its system, and shall regulate the flow of water into its system at a uniform rate over a twelve (12) hour period, and shall take all reasonable precautions to avoid and prevent public health hazards in its system and in the Town's. A qualified operator duly licensed by the State of North Carolina and any other regulatory authority having jurisdiction shall continuously operate LLC's water system.
- (f) LLC shall install a backflow preventer at the Point of Delivery. LLC shall follow all State and Federal laws and regulations necessary to the installation of said interconnection of the Town's water system to LLC.
- (g) In order to connect and access the Town's water system, LLC will pay to the Town an Access Fee of \$2,114,000.00 plus an appropriate access fee for the swimming pools, club houses, golf maintenance facilities and bath houses as determined by the Town's schedule of fees for such uses. \$500,000.00 of the Access Fee shall be paid by LLC to the Town on or before December 31, 2002, the balance of the Access Fee shall be paid upon completion of the Project pursuant to this Agreement.
- (i) All of the reasonable costs and expenses incurred by LLC, including, without limitation, its hard and soft costs in connection with the acquisition, design, engineering, construction, and installation of waterlines, pumps, valves, easements, and any other rights in land necessary to connect the Town's system to the LLC's system, for the Project shall be credited against the Access Fee payable to the Town. The amount of such credit shall be approved by the Town, which approval shall not be unreasonably withheld. Changes in the Project that are not approved in advance by the Town shall not be included in the credit against the Access Fee.
- (ii) At the Town's option, LLC will be willing to complete such other water transmission improvements along Old Graham Road as may be necessary or desirable to improve the existing operational system for the Town provided that the cost of such improvements are credited against the Access Fee and together with the cost of the improvements necessary to connect the LLC's system to the Town's system do not exceed the amount of the Access Fee.
- (iii) Any amount of the Access Fee which is paid directly to the Town by LLC will be reserved by the Town and used exclusively for the expansion of the Town's water system.
- (iv) Upon request by LLC and beginning not sooner than October 14, 2007, the Town will provide water to serve additional residential users as required by LLC for neighboring properties owned by LLC (not to exceed 600 residential users) on the same terms and

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conditions as set forth in this Agreement provided that LLC shall pay the Town an Access Fee at the current rate then charged by the Town for users in the corporate limits of the Town. Such Access Fee shall be paid as and when LLC submits to the appropriate governmental authority for site plan or subdivision approval of the properties to be served.

- (h) The users of LLC's water system shall not be deemed to be third party beneficiaries of this Agreement and the Town shall have no obligation to them nor shall they be entitled to any rights hereunder.
- (i) This Agreement shall not be assigned, transferred or sold without the prior consent of the Town which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, the LLC has the right without the Town's consent to assign this Agreement to a public utility company. The obligations set forth herein shall bind the parties hereto, and their respective successors and assigns.
- (j) For purposes of this Agreement, LLC and its permitted assigns shall be considered perpetual water customers of the Town.
- (k) LLC agrees that it will have entered into a binding contract for the engineering and design of the Project on or before December 31, 2002 and that it will start construction of the Project on or before December 31, 2003 or, if it fails to enter into such a contract or to timely start construction that it will post with the Town within thirty (30) days thereafter a letter of credit from an institution reasonably acceptable to the Town in the amount of \$100,000.00 securing the obligation of LLC to complete construction of the Project on or before December 31, 2004. If LLC fails to enter into such contract or to timely start construction and fails to post the letter of credit, the Town's sole remedy at such time shall be to terminate this Agreement and neither party shall have any other further obligation to the other.
- (l) The Town shall have the right to impose water conservation measures on the users of the LLC water system at the same time and in the same manner as it imposes such restrictions on its similar users in the corporate limits of the Town. Such rights shall be reserved in the joint operating agreement set forth in Section 8 hereof and provided by such other agreements or documentation as may be reasonably required by the Town.
- (m) LLC shall construct a 500,000 gallon water storage tank as part of the water system on its property in order to buffer the demand on the Town's water system.



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8. As a condition of each of the party's obligation under this Agreement, the Town and the operator of the LLC's water system shall have agreed to the terms of a joint operating agreement on or before the commencement of the physical construction of the Project.

9. Town and LLC's obligations hereunder shall be subject to such restrictions, limitations, and prohibitions as may be applicable as a result of lawful rules and regulations promulgated by any State or Federal Department or agency having jurisdiction over the Town or LLC and their operation of their respective water systems.

10. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service, by U.S. registered or certified mail, return receipt requested, postage prepaid, or by facsimile with prompt written confirmation, same as provided above, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

TOWN: Town of Pittsboro  
P. O. Box 759  
Pittsboro, North Carolina 27312  
Attn: Town Manager  
Facsimile: (919)542-7109

With copy to: Paul S. Messick, Jr.  
Gunn & Messick  
90 W. Salisbury Street  
Pittsboro, North Carolina 27312  
Facsimile: (919) 542-0257

LLC: Chatham Partners LLC  
Polk-Sullivan LLC  
1000 St. Albans Drive, Suite 400  
Raleigh, NC 27609  
Attn: Thomas L. Fonville  
Facsimile: (919) 785-4401

With copy to: Samuel T. Oliver, Jr.  
Manning, Fulton & Skinner, Jr.  
3605 Glenwood Avenue, Suite 500  
Raleigh, NC 27612  
Facsimile: 919-781-0811

Any notice or other communication given as hereinabove provided shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of transmission, if sent by facsimile, with a written follow up as provided above.

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

TOWN OF PITTSBORO

By: *Mark R. May*  
Mayor

[SEAL]

ATTEST

By: *Alicia F. Lloyd*  
Town Clerk

CHATHAM PARTNERS LLC

By: *Roman L. Powell*

POLK-SULLIVAN LLC

By: *John A. Polk*

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