



**TO:** Mayor and Town Council

**FROM:** Joseph A. Fivas, Town Manager

**DATE:** April 23rd, 2013

**SUBJECT:** Chestnut Corridor Right-of-Way Agreement

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Town staff was given direction by the Town Council to proceed with securing Right-of-Way for the Chestnut Connector. Town staff has an Agreement for Council's consideration. This Agreement includes the purchase of property to continue the Chestnut Parkway to US-74. The Agreement would compensate the property owners \$300,000 for the needed property. The Town Attorney has reviewed this Agreement.



DRAWN BY AND

RETURN TO:

George W. Sistrunk III, Esq.  
Hamilton Stephens Steele & Martin, PLLC  
201 S. College Street, Suite 2020  
Charlotte, NC 28244

Excise Tax: \$600.00

Tax Parcel Id. 0710500580 and 0710500590

STATE OF NORTH CAROLINA

RIGHT OF WAY AGREEMENT

COUNTY OF UNION

**THIS RIGHT OF WAY AGREEMENT** (the "**Agreement**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "**Effective Date**"), by and between **Dorothy Allison Lemmond Garner and husband, Lonzo Scott Garner** (collectively, "**Garner**"), **Paul Aubry, as Successor Trustee under the Jann L. Snyder Revocable Living Trust Dated April 19, 2011** ("**Trustee**") (Garner and Trustee are collectively referred to herein as the "**Grantor**"), whose address is \_\_\_\_\_, and the **Town of Indian Trail**, a political subdivision of the State of North Carolina (the "**Town**"), whose address 130 Blythe Drive, Indian Trail, North Carolina.

WITNESSETH:

Grantor, in consideration of Ten Dollars and No Cents (\$10.00) and other valuable consideration paid by or on behalf of the Town, the receipt and sufficiency of which are hereby acknowledged, does grant and convey unto the Town, its successors and assigns, subject to the limitations hereinafter described, the following perpetual and exclusive rights, privileges, and easements:

1. To go upon those lands of Grantor situated in Union County, North Carolina having Union County Tax Parcel ID #s 0710500580 and 0710500590, which are more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "**Land**"). Grantor hereby represents that the Land does not include the Grantor's primary residence.

2. To erect, construct, reconstruct, replace, rebuild, enlarge, modify, upgrade, remove, inspect, operate, maintain, use and repair in, upon, under, over and through the Land, a public roadway system and all appurtenances thereto, including, but not limited to, sidewalks, curbs, storm sewers, public signs and public utilities located or to be located therein (the "**Roadway Improvements**"), on, along, under, over, and through, a seventy (70) foot strip of land to be located within the corridor shown as the "150' Study Area" on the map attached hereto as ~~Exhibit B~~ and incorporated herein by reference (collectively, the "**Right of Way**"). The Town will prepare and file an amendment to this Agreement showing the exact metes and bounds description of the Right of Way once it has been finally located within the corridor shown on Exhibit B. The termination point at U.S. Highway 74 for the road to be built within the Right of Way will be determined in the sole discretion of the Town and the North Carolina Department of Transportation ("NCDOT"), however, Grantor will have the right to provide non-binding input with respect to the location of the termination point at U.S. Highway 74. In addition, Grantor will have the right to provide non-binding input into the design of the Roadway Improvements.

Without limiting the foregoing, the Right of Way will include the right (a) to enter the Right of Way areas at all times over the Land to construct, inspect, repair, maintain, and alter said public roadway system and other equipment, utilities, apparatus, and facilities in connection therewith; (b) to keep the Right of Way areas cleared of trees, shrubs, undergrowth, buildings, structures, and obstructions; (c) to trim or cut any tree, shrub, or undergrowth and remove any buildings, structures, and obstructions adjacent to the Right of Way areas that may, in the Town's sole opinion, interfere with the maintenance, operation, and use of the same.

3. Both sides of the Land will have right in /right out access onto Chestnut Parkway at such point(s) as determined by mutual agreement by both the Town and Grantor. In the event that additional right of way is required to accommodate right in / right out access from the Land onto Chestnut Parkway and Shady Bluff Road, Grantor agrees to convey such additional right of way to the Town for no additional consideration.

4. Grantor agrees that all Roadway Improvements installed on the Land by the Town, its representatives, agents, or assignees, will be and remain the property of the Town, removable or replaceable at its option. Grantor will not: (a) construct or place any structure (for example, mobile homes, trailers, mobile recreational vehicle homes, wells, swimming pools, septic or storage tanks, sheds, out-buildings, graves, roads, or any other kind of structure) within the Right of Way; (b) abandon any property (for example, wrecked or disabled vehicles, building materials, flammable materials, refuse of any type, sheds, or any other type of abandoned property or material) within the Right of Way; or (c) perform any type of construction, filling, grading, or activity of any type or form which may, in the Town's sole opinion, interfere in any way with or endanger the Roadway Improvements or the maintenance or operation of the Roadway Improvements.

5. The Town agrees that it will undertake reasonable efforts to have NCDOT install a traffic signal at the future intersection of Chestnut Parkway and US Highway 74.

6. Grantor will have the right to locate utilities under the Roadway Improvements at such point(s) as determined by the Town in its sole discretion, and the Town agrees that it will construct a sleeve or provide some other comparable method to allow Grantor to install utilities under the Roadway Improvements.

7. The failure of the Town to exercise any of the rights, privileges, and easements herein described will not be construed as a waiver or abandonment of the rights, privileges, and easements, and the Town thereafter may exercise, at any time and from time to time, any or all of them.

8. Grantor and the Town agree that the rights, privileges, and easements granted by this Agreement touch and concern Grantor's Land, and are of a commercial nature, and consequently are freely transferable and assignable by the Town, at any time and in its sole discretion.

9. Grantor agrees that upon the execution of this Agreement it will initiate the process of annexing the Land into the corporate boundaries of the Town and will in good faith take all actions necessary in order to complete the annexation.

10. The Town will pay a total of \$300,000.00 to Grantor for the Right of Way and other rights acquired pursuant to this Agreement, with \$150,000.00 being paid upon the execution of this Agreement, and \$150,000.00 being paid upon the submission of the annexation petition to the Town by Grantor.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easements, which will burden and run with title to the Land, unto the Town, its successors and assigns forever.

And, Grantor, for Grantor and for Grantor's successors and assigns, covenants to and with the Town, its successors and assigns that Grantor is lawfully seized of the Land in fee simple and has the right to convey the rights, privileges, and easements conveyed herein, free and clear from any and all liens and encumbrances and will forever warrant and defend the title to the rights, privileges, and easements conveyed herein against the lawful claims of all persons whomsoever.

***[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURES AND NOTARY ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]***

IN WITNESS WHEREOF, Grantor executes this Agreement, as of the Effective Date.

Dorothy Allison Lemmond Garner (SEAL)  
Dorothy Allison Lemmond Garner

Lonzo Scott Garner (SEAL)  
Lonzo Scott Garner

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Cheryl Anne Brown, a Notary Public of Mecklenburg County, State of North Carolina, certify that Dorothy Allison Lemmond Garner and Lonzo Scott Garner (the "Signatory") personally came before me this day and executed the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or  
 (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:  
(check one of the following)

a driver's license or  
 in the form of \_\_\_\_\_); or  
 (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

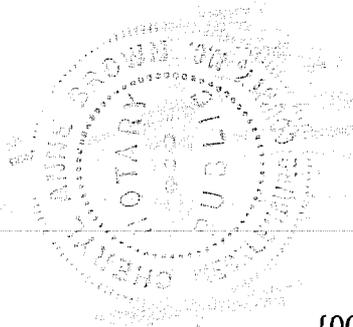
Witness my hand and official stamp or seal this 15 day of April, 2013.

Cheryl Anne Brown  
Notary Public

Print Name: Cheryl Anne Brown  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 6/30/2014

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



IN WITNESS WHEREOF, Grantor executes this Agreement, as of the Effective Date.

[Signature] (SEAL)

Paul Aubry, as Successor Trustee under the Jann L. Snyder Revocable Living Trust Dated April 19, 2011

~~STATE OF NORTH CAROLINA~~ <sup>OREGON P.A.</sup>  
~~COUNTY OF MECKLENBURG~~ <sup>COLUMBIA P.A.</sup>

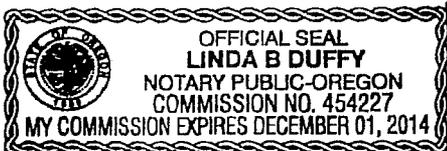
I, Linda B. Duffy, a Notary Public of COLUMBIA County, State of OREGON, certify that Paul Aubry, as Successor Trustee under the Jann L. Snyder Revocable Living Trust Dated April 19, 2011 (the "Signatory") personally came before me this day and executed the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:  
(check one of the following)  
 a driver's license or  
 in the form of \_\_\_\_\_); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this 9<sup>th</sup> day of April, 2013.



Linda B. Duffy  
Notary Public  
Print Name: Linda B. Duffy  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 12-14

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

**EXHIBIT A**

Description of the Land

Being all of the property described in Deed Book 5524, Page 592 of the Union County  
Public Registry.

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**EXHIBIT B**

See the attached map.

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Area 1 = 5.69 ac. - 4.00 ac.

150' Study Area

Parcel Number - 07105005 90

Area 2 = 9.80 ac. - 8.18 ac.

\*All areas are approximate

IIS 7A



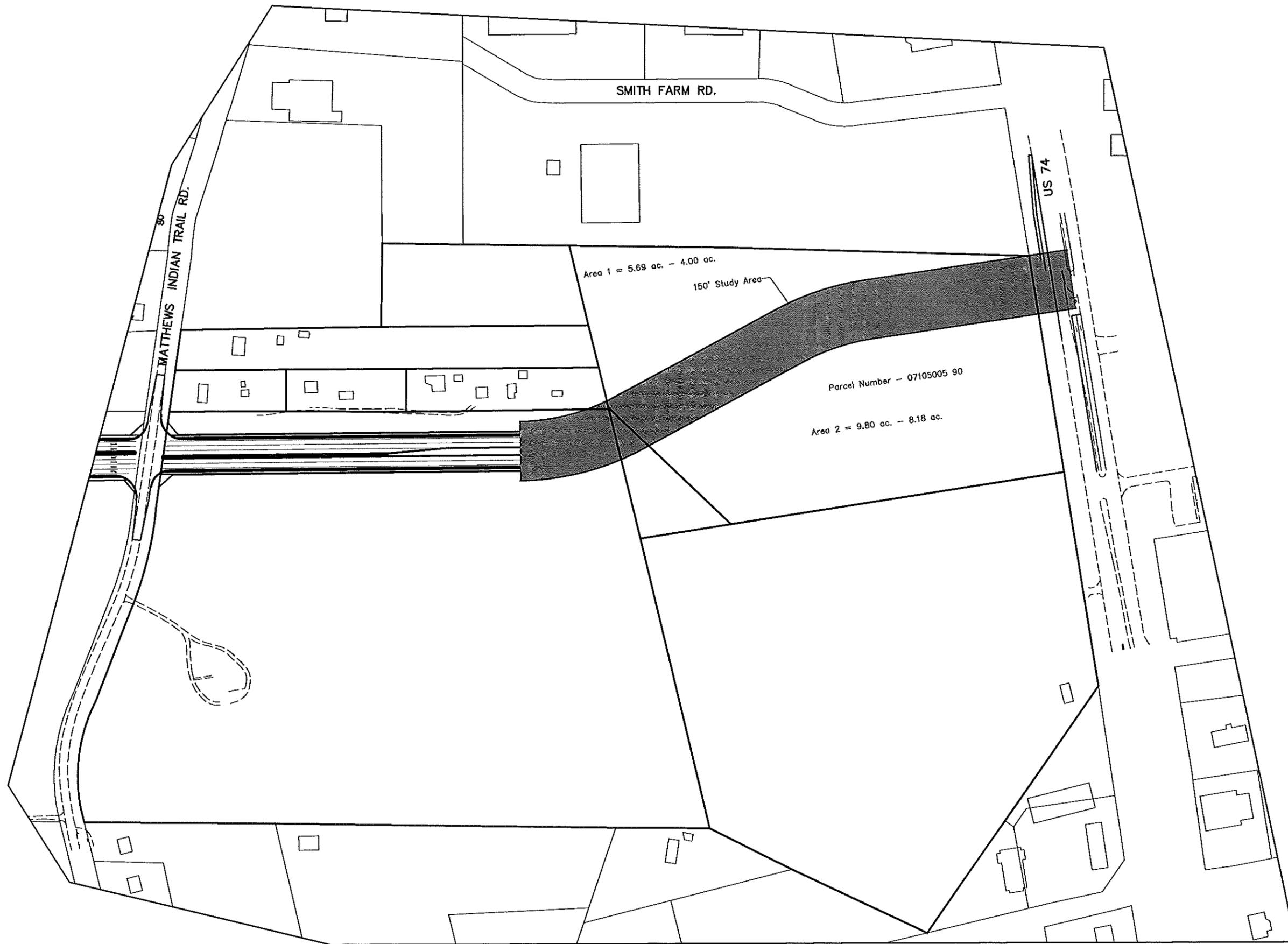
Plans Prepared By:  
Town of Indian Trail  
Engineering Department  
130 Byrbe Drive  
Indian Trail, North Carolina  
(704) 821-1314

NO.	DATE	BY	DESCRIPTION

PROJECT NUMBER	SCALE	CHECKED BY	DATE
01520001 - CAD FILE	1" = 100'	SK	February 13, 2013
PREPARED BY	APPROVED BY		
AM	SK		

Town of Indian Trail  
Chestnut Parkway Study Area

Study Area



\*All areas are approximate



Plans Prepared By:  
 Town of Indian Trail  
 Engineering Department  
 130 Bayne Drive  
 Indian Trail, North Carolina  
 (704) 821-1314

NO.	DATE	BY	DESCRIPTION

PROJECT NUMBER	SCALE	DATE
	1" = 200'	February 13, 2013
PREPARED BY	CHECKED BY	
AM	SK	
APPROVED BY		
SK		

Town of Indian Trail  
 Chestnut Parkway Study Area

Study Area