

## STREET MAINTENANCE AGREEMENT

This Street Maintenance Agreement (this "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the TOWN OF INDIAN TRAIL (the "Town") and Bonterra Village Homeowners Association, Inc. ("BVHA").

WHEREAS, BVHA represents the persons who own homes in the Bonterra neighborhood ("Bonterra"); and

WHEREAS, the streets within the first two phases of Bonterra were constructed as private roads with maintenance of those streets to be the responsibility of BHVA; and

WHEREAS, the remaining phases of Bonterra are to be constructed with streets which will be dedicated to the Town for public use and maintenance; and

WHEREAS, the private streets in the first two phases of Bonterra will necessarily be used as a means of access from the public streets in the final phases of Bonterra to major public thoroughfares; and

WHEREAS, it would be inequitable for the owners of homes in the first two phases of Bonterra to bear the cost of maintaining private streets when they will, in essence, be used as public streets; and

WHEREAS, BVHA has requested that the Town take over the maintenance of the private streets in the first two phases of Bonterra,

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Town and BVHA, both for themselves, and their successors, heirs, and assigns, hereby agree as follows:

1. Pursuant to the terms of this Agreement, the Town agrees to take over Maintenance of the private Streets identified on the final plats for Phase 1 and Phase 2 of Bonterra. A map of the Streets the Town is taking over for Maintenance is attached hereto as Exhibit A.

2. For purposes of this Agreement, “Streets” are defined to mean the concrete curb and gutters, the physical surface and substructure of the asphalt of the street, and the storm water system from curb to curb beneath the street structure.

3. For purposes of this Agreement, “Streets” shall not include the following:

- a. Landscaping within the island median at the entrance to Bonterra;
- b. The guard house at the entrance to Bonterra;
- c. The parking areas for the Bonterra clubhouse and all areas constructed for on-street parking;
- d. Any alleys or driveways;
- e. Any planting strips;
- f. Sidewalks.

4. For purposes of this Agreement, “Maintenance” is defined as the repair, maintenance and replacement of the Streets. The Town shall have the option, but not the absolute responsibility, to undertake the Maintenance of any portion of the Streets damaged by activities outside of the normal use of the Streets, such as construction activities by homeowners in Bonterra. In the event that the Streets are damaged and the Town undertakes Maintenance the Town shall have a right to seek compensation for such Maintenance from any party responsible for causing damage to the Streets.

5. The Town shall notify BVHA at least forty-five (45) days in advance of the start of any major repaving being undertaken by the Town within Bonterra so that BVHA can, if it chooses, enter into discussions with the contractor performing the repaving work for the Town regarding any paving BVHA may want performed in the parking areas at the Bonterra clubhouse or the on-street parking areas.

6. BVHA shall be responsible for installing required regulatory street signs that comply with the requirements for public roads and as designated by the Town. Thereafter, the Town shall be responsible for the maintenance of all required regulatory street signs within Phase 1 and Phase 2 of Bonterra and shall provide regulatory street signage of the same quality and type utilized by the Town for streets dedicated to the Town. If BVHA desires to have

decorative signs or poles then the cost for such signs and poles, and the cost of maintenance and replacement of such signs and poles, shall be the responsibility of BVHA.

7. BVHA shall be responsible for all electrical poles, Street lighting and the cost of such lighting for Phase 1 and Phase 2 of Bonterra.

8. BVHA shall be responsible for all irrigation systems and landscaping installed along the Streets. However, the Town agrees to repair the irrigation systems and landscaping if they are damaged by the Town as a result of any Maintenance undertaken by the Town.

9. BVHA shall amend its Declaration of Covenants, Conditions and Restrictions (“CCRs”) in the manner set forth in the attached Exhibit B to allow for the following:

- a. dedication of the Streets as public streets for the use and enjoyment of the public;
- b. an easement in favor of the Town over the Streets for the purpose of Maintenance, as well as an easement on property adjoining the Streets to the extent necessary and sufficient to accomplish Maintenance of the Streets;
- c. transfer of the Maintenance of the Streets to the Town.

10. Upon dedication of the Streets as being open to the public, and transfer of the street Maintenance to the Town, the Streets for all purposes shall be treated as public streets and shall be subject to all applicable laws, rules and regulations for public streets, including the setting of speed limits, and the residents of Bonterra shall abide by such laws, rules and regulations. BVHA shall file a document with the Register of Deeds for Union County North Carolina indicating that the Streets are available for use by the public.

11. BVHA shall convey and dedicate to the Town a public greenway trail to be located within the floodplain areas in Bonterra (the “Trail”) to be used by the Town as part of the Town’s pedestrian public trail system. The Town shall be responsible for the cost of constructing and maintaining the Trail and the timing of its construction shall be within the sole and absolute discretion of the Town. The Trail shall be a minimum of twenty (20) feet in width.

To the extent that parts of the Trail are not currently in common area owned by the BVHA it agrees to dedicate such areas of the Trail to the Town if and when such areas do become a part of the common area of Bonterra. A map of the area to be dedicated to the Town is attached hereto as Exhibit C. The Trail shall be open for use by the public.

12. BVHA shall pay to the Town the amount calculated by the Town's Street Acceptance Policy representing the estimated cost for the wear and tear on the Streets up to the time they are dedicated for public use and the Town accepts responsibility for Maintenance of the Streets.

13. This Agreement shall only become effective upon the occurrence of the LAST of the following events:

- a. approval of this Agreement by the Indian Trail Town Council;
- b. approval by the BVHA of the amendments to the CCRs, the offer of dedication of the Street Maintenance to the Town, the conveyance to the Town of the Street easements set forth in the amendments to the CCRs, and the offer of dedication of the Trail to the Town;
- c. acceptance by the Town of the dedication of the Streets for public use and acceptance of the responsibility of Maintenance for the Streets, and acceptance of the dedication of the Trail;
- d. installation of the regulatory street signs as set forth in paragraph 6;
- e. payment of the amounts set forth in paragraph 12;
- f. receipt of a letter from the State of North Carolina indicating that it has reviewed this Agreement and that Powell Bill Funds can be used by the Town for Maintenance of the Streets.

14. BVHA shall indemnify, defend and hold harmless, on demand, the Town, its elected or appointed officials, agents, boards, councils, commissions, employees and representatives, for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including but not limited to reasonable attorneys' fees, of any character or nature arising out of or resulting from any act or occurrence arising from

the validity of this Agreement, the Town entering into this Agreement, and from any action undertaken by the Town with respect to the Maintenance of the Streets. In any case in which BVHA provides a defense to the Town pursuant to this indemnity, the defense will be provided by attorneys acceptable to the Town. BVHA's obligations under this section shall survive any expiration or earlier termination of this Agreement. To the extent BVHA maintains insurance that is applicable to the Maintenance of the Streets then the Town shall be named as an additional insured on such policy of insurance.

15. This Agreement shall be terminated upon the happening of any of the following events:

- a. the Streets are not available for use by the general public;
- b. the State of North Carolina determines that the Town cannot use Powell Bill Funds for the Maintenance of the Streets;
- c. BVHA is for any reason dissolved pursuant to the CCRs;
- d. the easements granted to the Town by BVHA are revoked or terminated;
- e. the BVHA CCRs are amended in a manner that does not allow Street Maintenance to be conducted by the Town;
- f. any other act that would not allow the Town to legally provide Maintenance for the Streets.

16. General Provisions.

a. Survival of Provisions. The covenants, acknowledgements, representations, agreements and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

b. Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. All parties have at all times had access to an

attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof. No representations or warranties have been made by or on behalf of any party or relied upon by any party pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement embodies the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter.

c. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

d. Authority. Each party represents that they have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and have the authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby.

**IN WITNESS WHEREOF**, the parties, individually and by their duly authorized representatives, have executed this Agreement and agreed to its terms.

**BONTERRA VILLAGE HOMEOWNERS  
ASSOCIATION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

TOWN OF INDIAN TRAIL

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Town Manager

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

Date: \_\_\_\_\_

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Town of Indian Trail Finance Director