

**MAYOR**  
Michael L Alvarez

**MAYOR PRO TEM**  
David L. Cohn



**TOWN COUNCIL**  
Robert W. Allen  
Christopher M. King  
Darlene T. Luther  
David K. Waddell

Indian Trail Town Council Meeting  
March 21, 2013  
Civic Building  
6:00 p.m.

1. **CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**
2. **COUNCIL CONSIDERATION OF THE APPROVAL OF THE CLOSING AND OTHER DOCUMENTS FOR THE CAROLINA COURTS PROJECT** **action**
3. **CLOSED SESSION** **action**
4. **ADJOURN** **action**

*The Town of Indian Trail is committed to providing all citizens with the opportunity to participate fully in the public meeting process. Any person with a disability who needs an auxiliary aid or service in order to participate in this meeting may contact the Town Clerk at least 48 hours prior to the meeting. The e-mail address is [townclerk@admin.indiantrail.org](mailto:townclerk@admin.indiantrail.org); the phone number is 704-821-2541*



**TO:** Mayor and Town Council  
**FROM:** Kelly Barnhardt  
**DATE:** March 21, 2013  
**SUBJECT:** Carolina Courts Closing Documents

---

Final approval by Council needs to be given to the following documents before Carolina Courts can close on the 3 acre parcel located inside of the Town's 51 Acre Park ("Chestnut Park"). Here is a list of those documents:

1. Resolution
2. Special Warranty Deed
3. Facility Use Agreement
4. Closing Statement
5. Water & Sewer Extension Agreement

STATE OF NORTH CAROLINA

RESOLUTION # \_\_\_\_\_

TOWN OF INDIAN TRAIL

**RESOLUTION APPROVING PROPERTY SALE AND RELATED DOCUMENTS**

**WHEREAS:** The Town of Indian Trail (the "Town") previously approved the sale of certain real property ("Property") pursuant to the Agreement for Purchase and Sale between the Town and Partners in Hoops, LLC (the "Agreement") and closing under the Agreement is currently scheduled for March 21, 2013.

**BE IT THEREFORE RESOLVED, as follows:**

1. The Town approves closing the sale of the Property in accordance with the Agreement, with the following modification:
  - a. The Deed Restrictions required under Section 9 of the Agreement will not be included in the Deed to Partners, but will instead be included only in the Agreement Regarding Facility Operation and Use described below.
  - b. The concession agreement referenced in Section 10 of the Agreement shall be contained in a separate agreement (the "Concession Agreement") and not the declaration of covenants, as contemplated in the Agreement.
  
2. The Town approves the following documents, each of which are attached hereto:
  - a. Closing Statement;
  - b. Deed;
  - c. Agreement Regarding Facility Operation and Use.
  
3. The Town authorizes the Town Manager to negotiate any reasonable revisions to the foregoing documents, the Concession Agreement, and to finalize any other documents necessary for closing under the Agreement.

Approved this \_\_\_\_\_ day of March, 2013

\_\_\_\_\_

Attest: \_\_\_\_\_

Official Town Seal

**NORTH CAROLINA SPECIAL WARRANTY DEED**

Excise Tax: \$0

Parcel Identifier No. Portion of 07-105-011 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
By: \_\_\_\_\_

Mail/Box to: Hamilton Stephens Steele & Martin, PLLC (GWS), 201 S. College Street, Suite 2020, Charlotte, NC 28244-2020

This instrument was prepared by: Hamilton Stephens Steele & Martin, PLLC (GWS). No title search performed and no opinion on title given.

Brief description for the Index: Lot 1, Plat Cabinet L, File 900.

THIS DEED made this \_\_\_\_\_ day of March, 2013, by and between

GRANTOR	GRANTEE
TOWN OF INDIAN TRAIL	PARTNERS IN HOOPS, LLC
Address: 100 Navajo Trail P.O. Box 2430 Indian Trail, NC 28079	Address: 1119 Dobson Dr. Waxhaw, NC 28173

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the Town of Indian Trail, Union County, North Carolina and more particularly described as follows:

BEING all of Lot 1, containing 3.000 acres, as shown on the plat titled "Final Record Plat for the Town of Indian Trail" and recorded in Plat Cabinet L, File 900 of the Union County Public Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 5468, Page 1, Union County Public Registry.

A map showing the above-described property is recorded in Plat Cabinet L, Page 900.

The property does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

**See Exhibit A attached hereto and incorporated herein by reference.**

IN WITNESS WHEREOF, Grantor has executed this instrument as of the day and year first above written.

**TOWN OF INDIAN TRAIL**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[NOTARY SEAL]  
(MUST BE FULLY LEGIBLE)

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

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of North Carolina, certify that \_\_\_\_\_, (the "Signatory"), personally came before me this day and acknowledged that he is \_\_\_\_\_ of the Town of Indian Trail, and that he, as \_\_\_\_\_, being authorized to do so, executed the foregoing on behalf of the Town.

I certify that the Signatory personally appeared before me this day, and *(check one)*  
\_\_\_\_\_ (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)*  
\_\_\_\_\_ 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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_  
*[Note: Notary Public must sign exactly as on notary seal]*

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

1. Ad valorem taxes for the year 2013 and subsequent years.
2. All easements, covenants, conditions, restrictions, and other matters of record applicable to the property described in the Deed to which this Exhibit A is attached (the "Property"), including, without limitation the Declaration of Covenants, Conditions, and Restrictions recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Union County Public Registry.
3. Zoning and other governmental ordinances, regulations, and rules applicable to the Property.
4. Matters that would be revealed by a current and accurate survey of the property.

## **AGREEMENT REGARDING FACILITY OPERATION AND USE**

THIS AGREEMENT REGARDING FACILITY USE (this "Agreement") is made as of March 22, 2013 (the "Contract Date") by and between THE TOWN OF INDIAN TRAIL ("Town") and PARTNERS IN HOOPS, LLC, a North Carolina limited liability company ("Partners").

WHEREAS, the Town and Partners are parties to the Agreement for Purchase and Sale dated August 14, 2012 (the "Purchase Contract"), relating to the purchase by Partners of real property known as Lot 1, containing 3.000 acres, as shown on the plat titled "Final Record Plat for the Town of Indian Trail" and recorded in Plat Cabinet L, File 900 of the Union County Public Registry (the "Property");

WHEREAS, Partners intends to construct and operate the Facility (defined below) on the Property;

WHEREAS, the Purchase Contract contemplates that the Town and Partners will enter into an agreement regarding certain uses of the Facility;

WHEREAS, the parties have also agreed to include in this Agreement the deed restrictions required in Section 9 of the Purchase Contract, instead of including such restrictions in the deed to Partners for the Property (the "Deed").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Restrictions.**

- a. The Property shall only be used as allowed in Town of Indian Trail Ordinance # 0130108-161 (the "Ordinance"), unless otherwise approved by the Town Council of the Town of Indian Trail.
- b. Partners shall construct, at its sole cost and expense, a building of approximately 48,000 square feet containing at least the following amenities: 8 basketball courts and 8 volleyball courts (the "Facility"). Construction shall begin on the Facility within 30 days after the recording of the Deed and be substantially completed within 150 days after recording of the Deed. The Facility shall open to the public on or before December 31, 2013.
- c. The Town has the right to approve any improvements constructed on the Property, which approval shall not be unreasonably withheld.

2. **Use of Facility.** For a period of 15 years from the date of recording of the Deed, Partners agrees to the following:

- a. All Town of Indian Trail residents, at no cost, shall have open court time (the

“Open Court Hours”) at the Facility for at least 10 hours every week during normal business hours and for a total of at least 1,300 hours each calendar year.

- b. Partners shall identify and post on the Facility website the Open Court Hours at least 15 days in advance.
- c. The Town may use the Facility for up to 8 one-day Town events per calendar year (such events shall not count toward the Open Court Hours), which events may be held on either week or weekend days, as reasonably determined by the Town and Partners.
- d. Partners shall host at least one 5 day camp for disabled or at-risk youths who are residents of the Town of Indian Trail.
- e. The Town, at its cost, may place a flat screen television or other similar device for displaying information about the Town of Indian Trail and its events in a location in the lobby of the Facility that is visible to visitors to the Facility.
- f. The Town, at its cost, may place the Town of Indian Trail logo/seal and/or marketing material related to the Town of Indian Trail on the interior and/or exterior of the Facility in locations to be agreed upon in a reasonable manner by the Town and Partners.

3. **Usage Fee.** In consideration of the obligations of Partners set forth in Section 2 of this Agreement, the Town shall pay to Partners a one-time usage fee of \$150,000 (the “Fee”). The Fee shall be paid within five business days of written notice from Partners that Partners has closed the construction loan that is providing funding for the construction of the Facility (together with any reasonable evidence thereof requested by the Town).

4. **Default.** Each of the following shall be deemed a default by Partners and a breach of this Agreement: (a) failure to do, observe, keep and perform any of the terms, covenants, conditions and provisions of this Agreement to be done, observed, kept and performed by Partners, for a period of thirty (30) days after receipt of written notice from the Town (except for the matters described in Section 4(g) below, for which no notice and cure period is required); (b) the abandonment of the Property by Partners; (c) the adjudication of Partners as bankrupt; (d) the making by Partners of a general assignment for the benefit of creditors; (e) the taking by Partners of the benefit of any insolvency act or law; (f) the appointment of a permanent receiver or trustee in bankruptcy for Partner’s property; and (g) if, for reasons other than those beyond the control of Partners, such as fire, acts of God, or other similar force majeure events, (i) the Facility is not open to the public on or before December 31, 2013, (ii) the Facility is not operated as allowed under the Ordinance for more than 30 consecutive days or for more than 120 total days in any one calendar year, or (iii) the Property is put to any use other than the uses allowed under the Ordinance.

If the Town fails to pay the Fee in accordance with Section 3, such failure shall be a

default under this Agreement.

5. **Remedies**. If Partners defaults under this Agreement, the Town shall have all rights and remedies available to it in law and in equity for such default. Without limiting the foregoing, the Town and Partners agree to the following:

- a. If Partners defaults under this Agreement, Partners shall immediately repay the Fee to the Town; and
- b. The Town shall be entitled to an order for specific performance of the obligations of Partners under this Agreement.
- c. If Partners' default results from the matters set forth in Section 4(g) above, Partners shall immediately convey the Property to the Town, if requested by the Town.

If the Town defaults under this Agreement, Partners shall have all rights and remedies available to it in law and in equity for such default.

6. **Assignment**. Partners shall not assign this Agreement without the prior written consent of the Town.

7. **Non-Waiver Provision**. No waiver of any condition or covenant contained in this Agreement, or of any rule or regulation which is a part hereof, shall be implied as a result of either parties' failure to enforce such condition, covenant, rule or regulation or failure to take advantage of any of its rights on account of the same; and no express waiver shall effect any condition, covenant, rule or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No reference in this Agreement to any specific right or remedy shall preclude either party from exercising any other right or having any other remedy or from maintaining any other action to which it may otherwise be entitled at law or in equity.

8. **Miscellaneous**. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. If any provision of this Agreement shall be held as invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and there shall be deemed substituted for the affected provisions a valid and enforceable provision as similar as possible to the affected provision. Time is of the essence under this Agreement, and all provisions herein relating thereto shall be strictly construed. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

**[Signatures appear on the following page]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

PARTNERS IN HOOPS, LLC,  
a North Carolina limited liability company

TOWN OF INDIAN TRAIL

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

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

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

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

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

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

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

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

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

\_\_\_\_\_

(Signature of finance officer)



L. SETTLEMENT CHARGES							
700. TOTAL COMMISSION Based on Price			\$	@	%		
<i>Division of Commission (line 700) as Follows:</i>							
701.	\$	to					
702.	\$	to					
703.	Commission Paid at Settlement						
704.		to					
<b>800. ITEMS PAYABLE IN CONNECTION WITH LOAN</b>							
801.	Loan Origination Fee	%	to				
802.	Loan Discount	%	to				
803.	Appraisal Fee		to				
804.	Credit Report		to				
805.	Lender's Inspection Fee		to				
806.	Mortgage Ins. App. Fee		to				
807.	Assumption Fee		to				
808.							
809.							
810.							
811.							
<b>900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE</b>							
901.	Interest From	to	@ \$	/day	( days %)		
902.	MIP Totlms. for LifeOfLoan	for	months	to			
903.	Hazard Insurance Premium for	1.0 years	to				
904.							
905.							
<b>1000. RESERVES DEPOSITED WITH LENDER</b>							
1001.	Hazard Insurance	months	@ \$		per month		
1002.	Mortgage Insurance	months	@ \$		per month		
1003.	City/Town Taxes	months	@ \$		per month		
1004.	County Taxes	months	@ \$		per month		
1005.	Assessments	0.00 months	@ \$		per month		
1006.		0.00 months	@ \$		per month		
1007.		0.00 months	@ \$		per month		
1008.	Aggregate Adjustment	months	@ \$		per month		
<b>1100. TITLE CHARGES</b>							
1101.	Settlement or Closing Fee	to					
1102.	Abstract or Title Search	to	DI Search (for Inv 31740)			82.00	
1103.	Courier Fee	to					
1104.	Fax/Copy Fee/Print Fee	to					
1105.	Document Preparation	to					
1106.	Notary Fees	to	Carolyn Goodwin			12.00	
1107.	Attorney's Fees	to	Hinson Faulk, P.A.			750.00	
	<i>(includes above item numbers: )</i>						
1108.	Title Insurance	to	Chicago Title			65.00	
	<i>(includes above item numbers D1080.365389 )</i>						
1109.	Lender's Coverage	\$					
1110.	Owner's Coverage	\$	5,000.00				
1111.							
1112.							
1113.							
<b>1200. GOVERNMENT RECORDING AND TRANSFER CHARGES</b>							
1201.	Recording Fees: Deed \$	26.00;	Mortgage \$		Releases \$	52.00	
					26.00	52.00	
1202.	City/County Tax/Stamps: Deed						
1203.	State Tax/Stamps: Revenue Stamps	10.00;	Mortgage			10.00	
1204.	Consent and Subordination Rcdg	to	Register of Deeds			26.00	
1205.	CCR Rcdg	to	Register of Deeds			30.00	
<b>1300. ADDITIONAL SETTLEMENT CHARGES</b>							
1301.	Survey	to					
1302.	Pest Inspection	to					
1303.							
1304.							
1305.							
1400.	<b>TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)</b>					935.00	118.00

Certified to be a true copy.

\*Indicates closing costs paid by Seller on behalf of Buyer

**BUYER / SELLER CERTIFICATION**

**Borrower:** Partners In Hoops, LLC  
**Seller:** Town of Indian Trail  
**Settlement Agent:** Hinson Faulk, P.A.  
(704)684-0031  
**Place of Settlement:** 309 POST OFFICE DRIVE  
INDIAN TRAIL NC 28079  
**Settlement Date:** March 22, 2013  
**Property Location:** 240 Chestnut Parkway  
Indian Trail, NC 28079  
Union County, North Carolina  
3 Acres Matthews Indian Trail  
Rd/Chestnut Parkway

The Buyer and Seller this date have checked, reviewed and approved the figures appearing on the Disclosure/Settlement Statement (Statement of Actual Costs), consisting of two (2) pages. Buyer acknowledges receipt of the payment of the loan proceeds in full, and Seller acknowledges payment in full of the proceeds due Seller from the settlement.

The Buyer and Seller understand that the tax proration shown on the Settlement Statement are Based on the prior tax periods rate(s). The Buyer and Seller agree to adjust the tax proration shown on the Settlement Statement when the actual advalorem tax bill is rendered. Seller agrees to forward the next tax bill to Buyer immediately upon receipt of the bill from the tax office. Buyer understands that the next tax bill (even though in the name of the Seller) is the responsibility of the Buyer.

As part of the consideration of this sale, the contract between the parties is by reference incorporated herein and made a part hereof; the terms and conditions contained therein shall survive the closing and shall not merge upon the delivery of the warranty deed.

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Partners In Hoops, LLC

Town of Indian Trail

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

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

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

\_\_\_\_\_  
Hinson Faulk, P.A.  
Settlement Agent

**State of North Carolina**

**County of Union**

**STANDARD WATER AND SEWER SERVICES EXTENSION AGREEMENT**

This Agreement is made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between Union County, North Carolina, by and through its department, Union County Public Works (“UCPW” or “Union County”), **TOWN OF INDIAN TRAIL** , (“Developer”) and **TOWN OF INDIAN TRAIL**, (“Owner”).

WHEREAS, Owner is the record title owner of the real property described in Exhibit A, attached hereto, and incorporated herein by reference (the “Development Phase”), and

WHEREAS, Developer desires to develop the Development Phase by erecting thereon improvements for commercial, industrial, institutional and/or residential purposes which will require water and/or sewer service in accordance with engineered drawings, signed and sealed by the Developer’s Engineer of Record, and

WHEREAS, such drawings as are necessary for the Development Phase Project, including drawings for off-site improvements identified in the Conditional Sketch Plan Comment Letter or as otherwise required by UCPW, (the “Development Phase Plans”) have been provided to UCPW in addition to the Water and Sewer Plans for the Development, and such Development Phase Plans, incorporated herein by reference, have been approved by UCPW on the 7th day of **MARCH**, 2013 and are on file at the offices of UCPW, and

WHEREAS, Developer desires for UCPW to provide water and/or sewer service to the Development Phase, when the Development Phase Project is completed; and

WHEREAS, UCPW has submitted the Water and Sewer Plans to the North Carolina Department of Environment and Natural Resources (“NCDENR”), which has issued construction permits, identified by Permit # (s) **13-00228, WQ0036400(PRIVATE), WQ0036399(PUBLIC)** \_\_\_\_\_, to UCPW for the construction of water and/or sewer infrastructure, and

WHEREAS, Developer has agreed to construct the infrastructure relative to the Development Phase Project in accordance with the Development Phase Plans, construction permits, all Applicable Law, and in accordance with the Union

County Water and Sewer Extension Ordinance in effect as of the date of this Agreement (the "Ordinance"), and

WHEREAS, Developer has agreed to convey title to the water and/or sewer infrastructure relative to the Development Phase Project to Union County upon completion of construction and acceptance thereof by UCPW; and

WHEREAS, Owner has agreed to convey title to Union County of all easements and other interests in the Development Phase that are necessary for the conveyance of water or sewer and the maintenance and repair of the related infrastructure to be located thereon; and

WHEREAS, UCPW has agreed to allow Developer to construct the infrastructure relative to the Development Phase Project in accordance with the construction permits issued to UCPW by NCDENR, to accept title to said infrastructure and interests in property, to thereafter maintain said infrastructure, to provide water and/or sewer services in accordance with the terms of this Agreement and the Ordinance, and to thereafter operate such facilities so that the occupants of each residence or commercial improvement constructed in the Development Phase will receive water supply and/or sewer collection service from UCPW, all pursuant to the terms of this Agreement and the Ordinance; and

WHEREAS, Developer desires that UCPW reserve water and/or sewer treatment capacity, as specified herein, so that when the Development Phase Project has been completed, treatment capacity will be available to serve the improvements that have been constructed in the Development Phase; and

WHEREAS, Developer and Owner acknowledge that this Agreement does not entitle Developer or Owner to develop the Development Phase with densities which are inconsistent with those allowed under the density provisions of Applicable Law, which law includes the zoning ordinance of the local government having jurisdiction.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Developer, Owner and UCPW hereby covenant and agree as follows:

**1. Interpretation of Agreement:**

This Agreement is governed by all Applicable Law, including the terms of the Union County Water and Sewer Extension Ordinance in effect as of the date of this Agreement, which Ordinance is incorporated herein by reference. Developer, Owner, and UCPW are bound by and shall comply in all respects with the policies, procedures, requirements and terms of the Ordinance in performing their obligations under this Agreement. All policies, procedures, requirements and terms of the Ordinance shall be a part of this Agreement, even though not expressly set forth herein. Developer and Owner understand and agree that execution of this Agreement in no way vests any Development for zoning

purposes, whether the Development is located within Union County's zoning jurisdiction or within the zoning jurisdiction of one of the municipalities within which UCPW provides water and/or sewer service.

**2. Definitions:**

All capitalized terms contained in this Agreement shall have the same meaning as those defined terms contained in the Ordinance.

**3. Legal Description of Easements and Other Property Interests:**

Developer shall ensure that the plat required by the Appropriate Planning Agency contains a legal description of all easements and other property interests in the Development Phase to be conveyed to Union County, within which water and/or sewer infrastructure is to be built. Neither Developer nor Owner shall record the plat in the Register of Deeds' office until it has been approved by UCPW.

**4. Development, Ownership and Control of the on-site and off-site water distribution and sewage collections systems:**

Developer shall construct the infrastructure relative to the Development Phase Project (whether located within or without the boundaries of the Development Phase) as delineated in the Development Phase Plans, and in accordance with the Ordinance and other Applicable Law. Upon completion of the construction and acceptance by UCPW, Developer shall sign such documentation as UCPW may require in order to transfer title of the infrastructure to Union County.

**5. Owner's obligations:**

Upon notification that UCPW is prepared to accept the completed infrastructure, Owner shall execute all easements and convey to Union County all interests in the easements and other property interests shown on the approved Development Phase Plans that are necessary for the conveyance of water or sewer and the maintenance and repair of the related infrastructure located thereon. In the event that Developer is the record titleholder of the Development Phase, the Developer shall have all responsibilities of Owner under this Agreement and the Ordinance in addition to the responsibilities of Developer.

**6. Reservation of Allocated Capacity:**

Developer and UCPW agree that the Development Phase will require Allocated Capacity (i) in the amounts indicated below for non-residential development, and (ii) in such amounts as will serve the number of Equivalent Residential Units ("ERUs") shown below for residential development. For purposes of this Agreement, ERU will be defined as the amount of water used or wastewater generated, measured in gallons per day, by a typical single family residence in Union County.

With respect to Water:

0 ERUs for the residential portion of the Development Phase  
30717 Gallons/Day for the non-residential portion of the Development Phase

With respect to Sewer:

0 ERUs for the residential portion of the Development Phase  
30717 Gallons/Day for the non-residential portion of the Development Phase.

UCPW hereby allocates and reserves the Allocated Capacity for a period of five (5) years from the date of this Agreement for the benefit of the Development Phase in accordance with the terms of the Ordinance. If the infrastructure relative to the Development Phase Project that Developer has agreed to construct under this Agreement, as delineated on the Development Phase Plans, has not been completed and accepted by UCPW within five (5) years from the date of this Agreement, the Allocated Capacity shall revert to UCPW in accordance with the terms of the Ordinance.

#### **7. Payment of Capacity Fees:**

Developer has paid the Capacity Fees for treatment and transmission of water in the sum of **\$15,100.00** and sewer in the sum of **\$ 40,150.00**, and UCPW acknowledges receipt of the Capacity Fees. UCPW has agreed to reserve the Allocated Capacity for a period of five (5) years from the date of this Agreement, and will not receive revenue for the use of such Allocated Capacity until the Development Phase has been completed and occupants of the Development Phase begin to use UCPW water or sewer services. In the event that the Allocated Capacity reverts to UCPW because the infrastructure relative to the Development Phase Project has not been completed and accepted within five (5) years from the date of this Agreement, then the Capacity Fees paid by Developer shall be retained by UCPW as liquidated damages for reserving capacity for five (5) years without receiving revenue.

#### **8. Change of Development:**

Developer agrees that the plan of the Development Phase will not be changed in such a fashion that results in a change of the Development Phase Plans or the Allocated Capacity unless UCPW consents to the change in writing in accordance with the terms of the Ordinance. No change in the plan of the Development Phase that increases or decreases the Allocated Capacity of either water or sewer by more than 5% shall be effective unless a written amendment to this Agreement has been signed by UCPW, Owner and Developer and recorded in the Register of Deeds' office.

**9. Sale of Development Phase:**

Developer and Owner shall provide written notice to UCPW within five (5) business days of transfer of title of the Development Phase or any portion thereof, except for the transfer of title of a portion of the Development Phase (such as a Lot) to the end user pursuant to the Developer's plan of development.

**10. Transfer of Allocated Capacity:**

The Allocated Capacity is an appurtenance to the Development Phase, and, as such, will pass with the title to the Development Phase. The Allocated Capacity cannot be assigned, sold, transferred, leased, encumbered, or disposed of in any manner by Owner or Developer other than by sale or encumbrance of the Development Phase. The Allocated Capacity cannot be used in connection with the development of any real property other than the Development Phase. In the event of transfer of the Development Phase or any portion thereof, the person who acquires title shall have the Allocated Capacity attributable to such property subject to the terms of the Ordinance and this Agreement.

**11. Oversizing of Water or Sewer Infrastructure:**

In the event that UCPW requires Developer, as a condition of approval of the Water and Sewer Plans, to install improvements (whether located within or without the boundaries of the Development Phase) with a greater capacity than required to serve the Development Phase in order for UCPW to serve future developments or to meet future service needs of UCPW, UCPW shall reimburse Developer in accordance with the terms of Exhibit B, attached hereto, and incorporated herein by reference.

**12. Notices:**

Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to any other party in connection with this Agreement shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, to the addresses set forth below (or at such other addresses as specified by written notice delivered in accordance herewith):

To UCPW:                    Director, Union County Public Works  
500 N. Main St., Suite 500  
Monroe, NC 28112

To Developer:            **TOWN OF INDIAN TRAIL**  
**130 BLYTHE DRIVE**  
**INDIAN TRAIL, NC 28079**

To Owner:                   **TOWN OF INDIAN TRAIL  
130 BLYTHE DRIVE  
INDIAN TRAIL, NC 28079**

**12. Authorization:**

Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

**13. Entire Agreement:**

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their assigns and successors in interest. This Agreement contains the complete agreement of the parties regarding the terms and conditions of the Agreement, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

**14. Severability:**

The provisions hereof are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the other provisions shall remain in full force and effect and shall not thereby be affected unless such ruling shall make further performance hereunder impossible or impose an unconscionable burden upon one of the parties. The parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as practicable to that of the invalid, illegal or unenforceable provisions.

**15. Selection of Law:**

This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. Exclusive venue for any disputes arising hereunder is conferred upon the General Courts of Justice of the State of North Carolina sitting in Union County, North Carolina.

**In witness whereof, the parties have set their hands and seals this the day and year first above written.**

**[Signature Page]**  
(County)

Union County a Political Subdivision of North Carolina

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

**Cynthia A. Coto**  
Title: **County Manager**

ATTEST :

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

**Lynn West**  
Title: **Clerk of the Union County Board of  
Commissions**

---

SEAL-STAMP State of North Carolina – County of Union

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Lynn West personally appeared before me, a Notary Public in this jurisdiction, and having been duly sworn did state that she knows the common seal of Union County, and is acquainted with Cynthia A. Coto, who is County Manager of Union County; and did further state that she is the duly appointed or designated Clerk to the Board of Commissioners of Union County, and saw the County Manager sign the foregoing instrument, and that Lynn West, as Clerk, affixed the common seal of Union County to the instrument, and that Lynn West as Clerk, signed her name in attestation of the execution of the instrument in the presence of the County Manager, and that they both acknowledged the due execution of the same. Witness my hand and official seal or stamp.

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

Notary Public: \_\_\_\_\_

---

**[Signature Page]**

Owner

Individual Owner:

\_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_

\_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_

LLC/Corporate Owner:

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

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

Partnership:

\_\_\_\_\_  
Partnership Name

\_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_, General Partner



NOTARY ACKNOWLEDGMENT  
(Owner)

Individual Acknowledgment

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, Notary Public of the  
County \_\_\_\_\_ and State \_\_\_\_\_ aforesaid, certify that  
\_\_\_\_\_, personally  
appeared before me this day and acknowledged the due execution of the foregoing  
instrument for the purposes therein expressed. Witness my hand and Notarial stamp or  
seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Comm. Expires: \_\_\_\_\_ (SEAL)  
Notary: \_\_\_\_\_  
\_\_\_\_\_

Corporate/LLC Acknowledgment

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that  
\_\_\_\_\_ personally came before me this  
day and acknowledged that they are the \_\_\_\_\_ of  
\_\_\_\_\_ a \_\_\_\_\_ (type  
of Entity), and that by authority duly given and as the act of such entity, he signed the  
foregoing instrument in its name on its behalf as its act and deed. Witness my hand and  
Notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

My Comm. Expires: \_\_\_\_\_ (SEAL)  
Notary: \_\_\_\_\_  
\_\_\_\_\_



Partnership Acknowledgment

State of \_\_\_\_\_

County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that they are the General Partner of \_\_\_\_\_, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

My Comm. Expires:

\_\_\_\_\_

\_\_\_\_\_  
(SEAL)  
Notary: \_\_\_\_\_

**[Signature Page]**

Developer

Individual Developer:

\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL)

LLC/Corporate Developer:

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

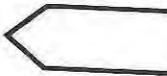
By: \_\_\_\_\_

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

Partnership:

\_\_\_\_\_  
Partnership Name

\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL), General Partner



NOTARY ACKNOWLEDGMENT  
(Developer)

Individual Acknowledgment

State Of \_\_\_\_\_  
County Of \_\_\_\_\_

I, \_\_\_\_\_, Notary Public of the  
County \_\_\_\_\_ and State \_\_\_\_\_ aforesaid, certify that  
\_\_\_\_\_, personally  
appeared before me this day and acknowledged the due execution of the foregoing  
instrument for the purposes therein expressed. Witness my hand and Notarial stamp or  
seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My Comm. Expires: \_\_\_\_\_ (SEAL)  
Notary: \_\_\_\_\_  
\_\_\_\_\_

Corporate/LLC Acknowledgment

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that  
\_\_\_\_\_ personally came before me this  
day and acknowledged that he is/are the \_\_\_\_\_ of  
\_\_\_\_\_ a \_\_\_\_\_ (type of  
Entity), and that by authority duly given and as the act of such entity, he signed the  
foregoing instrument in its name on its behalf as its act and deed. Witness my hand and  
Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My Comm. Expires: \_\_\_\_\_ (SEAL)  
Notary: \_\_\_\_\_  
\_\_\_\_\_



Partnership Acknowledgment

State of \_\_\_\_\_

County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_\_he is/are the General Partner of \_\_\_\_\_, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

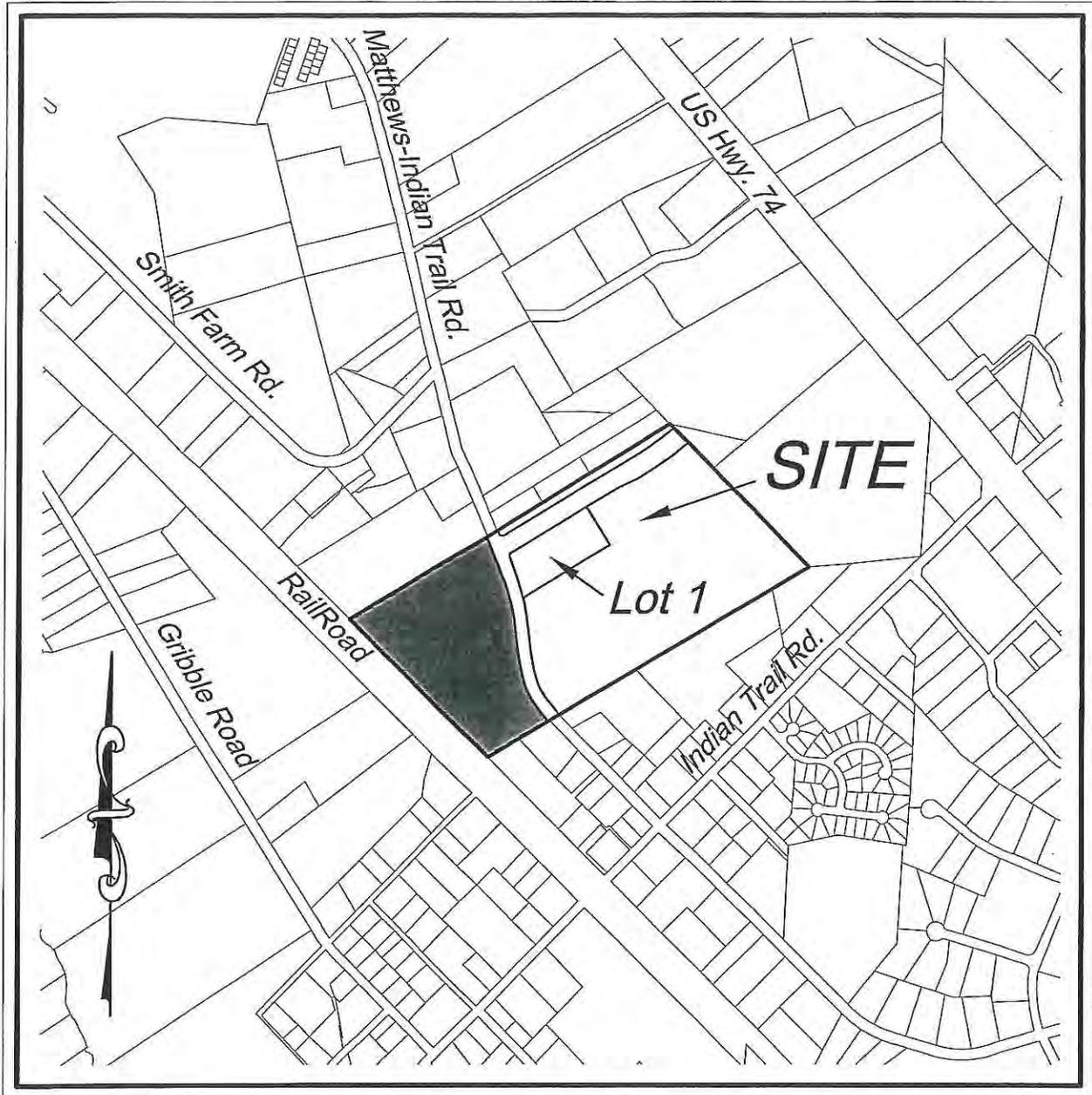
My Comm. Expires:

\_\_\_\_\_

\_\_\_\_\_(SEAL)  
Notary: \_\_\_\_\_

# Exhibit A

Chestnut Park  
A Portion of Tax Parcel #07-105-011



Overall Parcel Area = 51.21 Acres  
Chestnut Park (Permitted Acreage) = 28.55



*Portion of Parcel Not Included  
In Extension Agreement*

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.