

**STATE OF NORTH CAROLINA
UNION COUNTY**

NAMING RIGHTS AGREEMENT

This Naming Rights Agreement (this “Agreement”) is entered into this the ___ day of _____, 2010 by and between the **Town of Indian Trail North Carolina**, a political subdivision of the State of North Carolina (the “Town”) and the **Union West Rotary Club of Indian Trail**, a non-profit entity organized and existing under the laws of the State of North Carolina (“Union West Rotary”).

RECITALS

WHEREAS, the Town is the owner of a parcel of property located at the 100 block of Blyth Drive in Indian Trail, North Carolina that the Town intends to develop into a park known as “Crossing Path Park” (the “Park”), which includes plans for the construction of an outdoor amphitheater stage area (the “Amphitheater”); and

WHEREAS, Union West Rotary desires to further the object of Rotary by encouraging and fostering the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster: the development of acquaintance as an opportunity for service; high ethical standards in business and professions, the recognition of the worthiness of all useful occupations, and the dignifying of each Rotarian’s occupation as an opportunity to serve society; the application of the ideal of service in each Rotarian’s personal, business and community life; and the advancement of international understanding, goodwill and peace through a world fellowship of business and professional persons united in the ideal of service; and

WHEREAS, the Town is interested in obtaining sponsors to help share in the cost of the improvements to the Park; and

WHEREAS, Union West Rotary has an interest in sponsoring the Amphitheater and obtaining the right to place its name on the Amphitheater;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Town agrees to construct the Amphitheater with a value of no less than Fifty Thousand Dollars and No Cents (\$50,000.00). The Town agrees to consult with Union West Rotary and to allow Union West Rotary to have input concerning the design and planning of the Amphitheater, but all final decisions as to the ultimate design, planning and location of the Amphitheater shall be made by the Town.

2. Union West Rotary agrees to pay to the Town the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) for the right to place its name on the Amphitheater and Union West Rotary shall make payments to the Town as follows:

a. An initial payment of Ten Thousand Dollars and No Cents (\$10,000.00) to the Town on or before December 31, 2010;

b. Additional payments of Five Thousand Dollars and No Cents (\$5,000.00) shall be made to the Town on or before December 31 of each year after 2010 for a period of eight (8) years, until the total amount is paid;

c. There shall not be any interest charged on the amounts to be paid by Union West Rotary;

d. Union West Rotary shall be entitled to make any scheduled payment early and there shall be no penalty for early payment.

3. The Amphitheater shall be named the “Union West Rotary Amphitheater” and the Town shall cause this logo to be prominently displayed on the Amphitheater and the Town agrees that this logo shall appear on all materials, printed or electronic, related to events taking place at the Amphitheater. Union West Rotary grants the Town a license to use the name “Union West Rotary Amphitheater” on all materials, printed or electronic, related to the Amphitheater. The parties agree to act in good faith to agree upon the exact size, location and/or depiction of the logo to be employed by the Town. All signage provided hereunder shall be maintained in a first-class condition. In the event that Union West Rotary desires the name of the Amphitheater or the logo to be changed or altered then Union West Rotary shall be responsible for the cost of any such change or alteration.

4. The agreement for Union West Rotary to place its name on the Amphitheater shall terminate in the event that the Amphitheater reaches the end of its useful life and must be replaced by a new Amphitheater, but in no event less than twenty-five (25) years from the date of the completion of construction of the Amphitheater, except for the occurrence of an event of default.

5. Nothing herein shall prevent the Town from seeking sponsors for other parts, facilities or areas of the Park, or from accepting a sponsorship for naming the entire Park.

6. **Default by Rotary.**

The following events shall constitute an event of default by Rotary:

8. **Miscellaneous 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. **Relationship.** Neither party shall become the agent of the other party for any purpose, and this Agreement shall not create a partnership or joint venture. Nothing herein shall be construed to give Union West Rotary any control or responsibility over the events to be held at the Amphitheater or the Park.

c. **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. The Town and Union West Rotary 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 the Town or relied upon by Union West Rotary 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 supersede all prior proposals, negotiations, agreements and understandings relating to such subject matter.

d. Pronouns. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders. The singular shall include the plural and vice versa.

e. Governing Law. This Agreement, its execution, interpretation and performance, shall be governed by and construed in accordance with the laws of the State of North Carolina. Any controversy or claim arising out of or in any way related to this Agreement or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of North Carolina. Legal proceedings involving any such controversy or claim may be instituted only in the state courts for Union County, North Carolina or in the United States District Court for the Western District of North Carolina, and the Town and Union West Rotary hereby irrevocably consent to the jurisdiction of such courts over their persons and waive any defense based on improper or inconvenient venue or lack of personal jurisdiction, and waive any defense based upon improper or insufficient process or service of process.

f. Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof or thereof.

g. No Assignment. The rights and obligations of the parties hereunder may not be assigned or transferred to any person or entity.

h. 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.

i. Invalid Provision to Affect No Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any transaction related thereto shall be held invalid, then such provision only shall be deemed invalid and the remainder of this Agreement shall remain operative and in full force and effect.

j. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal, as of the day and year first above written.

TOWN OF INDIAN TRAIL, North Carolina

By: _____

Its: _____

Date: _____

UNION WEST ROTARY CLUB

By: _____

Its: _____

Date: _____

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

Finance Officer

Date