

CHESHIRE'S TOWN CENTER ASSOCIATION DECLARATION

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C.S. Ragan, LLC, a North Carolina limited liability company (the "Founder"), makes this Cheshire's Town Center Association Declaration (the "Declaration") as of the ___ day of _____, 2019. The Founder shall be deemed the "Declarant" for purposes of GS Chapter 47F Planned Community Act (the "PCA").

STATEMENT OF PURPOSE:

Cheshire's Town Center at the Town of Cheshire ("Cheshire's Town Center"), situated in the Town of Cheshire (the "Community"), is a traditional neighborhood development proposed to contain residential, commercial, and civic spaces. When complete, the Community is designed to create a mixed-use community consisting of single and multifamily residential, office, retail, maker, civic, and common spaces. While Cheshire's Town Center is situated within Buncombe County, North Carolina, and on its own contains the elements of a small town, it is not incorporated as a town nor does it have a town government. The needs of Cheshire's Town Center are met primarily by the Cheshire's Town Center Association Inc. (the "Association").

Under the terms of the Declaration, the Association maintains all of the Association's common elements, (the "Neighborhood Commons") including open space, alleys, parks and recreational facilities. The Association also helps preserve neighborhood harmony by facilitating neighborhood discussion, stimulating an understanding of the neighborhood goals and enforcing the covenants when necessary.

The Association will create Subzones and separate committees to meet the special needs of the commercial properties and maker spaces within Cheshire's Town Center and the special needs of the residential spaces. The Association provides maintenance and services appropriate to all of the spaces including maintaining common elements, which may include open space, alleys, parks and recreational facilities. The Association may also function as a merchants' association for advertising and business development.

Membership in committees or Subzones may change from time to time as the use of a property changes. The Owners of all Lots within Cheshire's Town Center will be members of one committee or Subzone or the other, and subject to either, depending on the use of the property. All Owners of Residential Lots will be members of the residential committee or Subzones. Owners of Live/Work Units will also be members of the residential committee or Subzones. All Owners of Commercial Lots, including without limitation, maker spaces, will be members of the non-residential committee or Subzone.

There are several reasons why this separation is built into the documents, including the fact that the committees or Subzones have different interests and focuses. Despite this separation, the entire community is united in many ways. The provisions of Cheshire's Town Center Operating Agreement, particularly the architectural control provisions, are intended to facilitate the completion of the Master Plan and allow Cheshire's Town Center to retain its design principles as it matures.

DECLARATION:

The Founder hereby establishes the Community as all of that real property in Buncombe County, North Carolina, described on Exhibit A and submits to this Declaration that portion of the Community described in Exhibit B ("Cheshire's Town Center").

The Founder hereby declares that this Declaration shall run with the land and be binding upon all parties having any right, title or interest in Cheshire's Town Center, and which shall inure to the benefit of every Owner of Cheshire's Town Center or any portion of it and to the benefit of the Founder.

The Founder shall have the right, but not the obligation, from time to time in its sole discretion, to annex any portion of the Community and any real property not a part of the Community but contiguous to Cheshire's Town Center property, or within one mile of any portion of Cheshire's Town Center (including any real property separated from Cheshire's Town Center by a public street, body of water or other real property) or any other real property with a reasonable relationship to Cheshire's Town Center. Upon its addition, such real property shall be deemed a part of Cheshire's Town Center. If the real property is owned by an entity other than the Founder, the Supplemental Declaration shall be signed by the owner of the real property and by the Founder. A Supplemental Declaration adding the additional real property shall become effective upon being recorded with the appropriate office of the Buncombe County Register of Deeds ("Register of Deeds"). The Supplemental Declaration may modify, remove or add to the provisions of this Declaration if needed to reflect the different character of the additional property.

The Founder reserves the right to withdraw real property from Cheshire's Town Center so long as all Owners within the area to be withdrawn consent and access to the remaining portions of Cheshire's Town Center are preserved.

Additions will become part of Cheshire's Town Center and real property withdrawn from this Declaration will no longer be part of Cheshire's Town Center.

Except as expressly provided in the Operating Agreement, the Neighborhood Association shall have no responsibility for maintenance of Cheshire's Town Center or regulation of its Neighborhood Commons, which shall be the responsibility of the Association. If in any instance the provisions of this Declaration are in conflict with the provisions of the Operating Agreement, the provisions of the Operating Agreement shall apply.

Unless the context indicates otherwise, capitalized terms are typically defined terms. If the terms are used in only one Part, they are typically defined in that part, and otherwise, they are defined in the Glossary (Part 7 of this Declaration).



THE ASSOCIATION

1.1 Establishment. The Association shall be established under North Carolina law as a nonprofit corporation subject to the North Carolina Planned Community Act, General Statutes Chapter 47F, as amended.

1.2 Duties and Powers. The Association shall perform all duties required by this Declaration, shall have all rights provided by this Declaration, and shall enforce the terms of this Declaration. Additionally, the Association may provide any service allowed by law to be provided by a property owners' association organized as a nonprofit corporation. If requested by the President, the Board or at least 10% of the Owners by written petitions, a meeting of Owners may be called and, if a quorum is obtained, Owners representing a majority of the Membership Interests present at the meeting may repeal the offering of the additional service, subject to the committee or Subzone veto described below.

1.3 Membership. Every Owner of a Lot shall be a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from title to any Lot. Owners of residential Lots in Cheshire's Town Center containing no commercial operations or containing only home occupations, live/work or real property rental shall be members of the Residential Committee or Residential Subzone and Owners of commercial or maker space Lots in Cheshire's Town Center containing no residential uses other than multifamily rental shall be members of the Non-residential Committee or Non-residential Subzone. Generally, an Owner of a Civic Building or mixed-use building will be a member of the Non-residential Committee or Non-residential Subzone, but if the residential portion of the building is owned as condominiums, the Owners of the residential units in a mixed-use building shall be placed in the Residential Committee or Residential Subzone.

1.4 Membership Interest.

(a) Generally. Both voting rights and Assessments shall be based on Membership Interest.

(b) Lots. Owners of Lots in the nonresidential committee or nonresidential Subzone shall have one Membership Interest for each Development Unit. A Development Unit is defined as 1,000 gross square feet of enclosed building area (or fraction thereof) within the Lot, as such gross square footage is determined by the Association. Owners of Lots in the residential committee or residential Subzone shall have one Membership Interest for each complete residential unit they own. Auxiliary Dwelling Units shall not count as separate residential units.

(c) Unimproved Lots. A Lot that has been conveyed to an entity other than the Founder and which does not have a building that is substantially complete

shall have a ¼ Membership Interest. The Founder shall have the right to waive Assessments for such unimproved lot for not more than two years, provided that: (i) the Lot Owner of a lot receiving such waiver shall not be entitled to vote on Town Center matters during the waiver period, and (ii) such waiver shall end upon the commencement of construction of any portion of a building on the Lot.

(d) Exempt Lots. Lots that are used by nonprofit or governmental entities primarily for the benefit of Town Center Occupants or invitees may be exempt from Assessments or pay reduced Assessments as determined on an annual basis by the Association. They may be assigned a Membership Interest by the Association for voting purposes.

(e) Subdivision of Property. If ownership of a Lot, or portion of a Lot, is divided horizontally, the Membership Interest for that lot shall be divided among the owners of nonresidential space based on Development Units and owners of residential space based on dwelling units. The Association shall provide a separate Assessment to each Owner of the horizontally divided lot.

(f) Determination by Association. The Board, using reasonable discretion, has the authority to determine the Membership Interest for a particular Lot. The Board may establish rules for the determination of residential and commercial use and other matters relating to membership and Assessment. The Association's agent may enter and examine buildings after notice and at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Board to appeal an assessment evaluation; however, the decision of the Board after the hearing is final.

1.5 Exercise of Vote. Each Owner of a Lot shall be entitled to cast that number of votes equal to its Membership Interest as determined in Section 1.4 above. When more than one person holds a fee interest in any Lot, all such persons shall be Members of the Association. However, the number of votes for that Lot shall not be increased, and each Member shall have only their equal percentage of the Membership Interest. Corporations, partnerships and other entities shall notify the Association of the natural person who shall be considered a Member of the Association and exercise its vote. A Member may by written agreement appoint a commercial tenant to exercise the Lot's voting rights. Such assignment may expire after a specified term and in any case may be revoked by the Member by delivery to the Association of a signed revocation.

1.6 Board of Directors.

(a) Initial Composition. The Board shall initially consist of at least three persons who shall be originally appointed by the Founder. During the Period of Founder Control, the Founder shall set the number of Directors, provided there is not less than three (3), and the Founder shall have the right to appoint the Directors, and set the terms therefor. The Founder may create alternative means of appointing the Directors and may transfer authority to elect all or a portion of the Directors to the Members. Thereafter, the Founder shall have the right to select one of the members of the Board until all Lots in the Neighborhood shall have been conveyed to Owners other than the Founder or its designated entities. Following the Period of Founder Control, when the Members

elect all of the Directors, each of the committees or Subzones shall elect one half of the Directors elected by Members and the elected Directors shall agree upon and appoint the unfilled Director position.

(b) Later Composition. When the Founder no longer selects a majority of the Board, the Board shall determine from time to time the number of Directors, which shall be either three or five Directors.

(c) Compensation. Directors shall receive no compensation for their services unless expressly provided for in resolutions adopted by the members but may be reimbursed for expenses.

1.7 Chancellors. The Chancellors may mediate disputes among Owners or Occupants related to the requirements of this Declaration, the Operating Agreement, Cheshire's Town Center Design Standards, or any Rules giving the Board, Owners and residential and commercial Tenants or Occupants a forum to work out differences and find solutions. Depending on the circumstances, the Chancellors may act individually or as a panel. If disputes cannot be resolved by mediation, the Chancellors may make recommendations to the Board. The Board determines the number of Chancellors (there may be one or more Chancellors) and may decide to make the Chancellor a paid professional position, in which case the Board will select a mediator, attorney or other professional for each available Chancellor position. Chancellors are elected by the Members unless the Board has determined that Chancellors are to be paid professional positions. If there are insufficient numbers of candidates for Chancellor, the Board may select the remaining Chancellors.

1.8 Contracts. The Association may contract with any party, including the Founder, for the performance of all or any portion of the management of the Association and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, Subzone Assessment, Special Assessment or Individual Lot Assessment, as applicable. The Association may require that Owners contract for certain routine exterior maintenance in order to provide a uniform level of care. The Association also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which, including any management fee applied by the Association, will be assessed to that Owner as an Individual Lot Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

1.9 Subzones.

(a) Purpose. Within Cheshire's Town Center, a Lot may be part of a Subzone. Subzones are intended to provide a flexible means for providing additional maintenance or capital improvements to a small portion of Cheshire's Town Center that has special needs. The Board may designate Subzone boundaries at the time of the addition of the real property by Supplemental Declaration, or at any later time. It is possible for a Lot to be in more than one Subzone if it is divided into horizontal units.

(b) Subzone Expenses. Some expenses apply only to certain Subzones within Cheshire's Town Center:

- Capital Improvements. Any Subzone may, by approval of

Owners representing two-thirds (2/3) of the Membership Interests within that Subzone and approval of the Board, elect to assess all Owners within the Subzone for capital improvements to the Neighborhood Commons which will primarily benefit that Subzone. Assessments for maintenance or replacement of Improvements in a Subzone do not require approval of the Membership Interests in that Subzone.

- Additional Services. Any Subzone may, by approval of Owners representing a majority of the Membership Interests within that Subzone and approval of the Board, elect to assess all Owners within the Subzone for maintenance or services in addition to those normally provided by the Association. For front-yard landscape maintenance, the Board may define a Subzone by Lot type and may approve landscape service for that Subzone, which shall be effective unless a majority of the Membership Interests within that Subzone object in writing to the landscape service.

If the Assessment is approved, it will be assessed to and allocated among all Owners within that Subzone or designated group as Individual Lot Assessments, in proportion to Membership Interests within the Subzone or group.

(c) Combination of Subzones. Subzones may be combined for Subzone Assessments. If more than one Subzone is to vote, the Board shall determine whether approval and Assessment is to be by Subzone or by the combined group of Subzones. If a group smaller than a Subzone wishes to be assessed for capital improvements or services, all of those being assessed must agree to the Assessment and such Assessment shall be assessed to, and allotted as, Individual Lot Assessments, in proportion to each Owner's Membership Interest.

(d) Limitations on Subzones. There shall not be more than two Subzones, one of which may be a residential Subzone and the other a nonresidential Subzone. All Members of the residential Subzone, if any, shall automatically be members of the Residential Committee, and all Members of the nonresidential Subzone, if any, shall automatically be members of the Non-residential Committee.

1.10 Additional Provisions. Additional provisions concerning the operation of the Association and the Board are contained in the Articles and Bylaws, as such may be amended from time to time.



THE NEIGHBORHOOD COMMONS

2.1 Establishment.

(a) Generally. Certain common areas and elements and other facilities intended for the common use of Owners, Occupants, Tenants and guests in Cheshire's Town Center, including commercial guests, shall be considered Neighborhood Commons. It is anticipated that the Neighborhood Commons may include streets, alleys, parking areas, walkways, sidewalks, landscaped areas, common signage, lighting, restrooms, water fountains, trash containers and other facilities. The Neighborhood Commons are not dedicated for use by the general public.

(b) Ownership or Easement Rights. The Neighborhood Commons shall include real property, any improvements on that real property, all personal property for the Owners' common use, and any other property of any type specifically designated as Neighborhood Commons. In most cases, the Association will hold title to the Neighborhood Commons in fee simple. In other cases, the Association's ownership may be in the form of easements, leases or other rights. Property or property rights conveyed to the Association will be presumed to be Neighborhood Commons unless indicated otherwise.

(c) Public, Private Property. Public rights-of-way and other public or private properties located within reasonable proximity to Cheshire's Town Center may be maintained in the same manner as Neighborhood Commons if failure to do so would affect the appearance of or access to Cheshire's Town Center. If approved by both the owner of the property and the Association, Neighborhood Commons may include sidewalks and other portions of privately-owned property that are designed for use by all Lot Owners. The Association may require the granting of an easement as a condition to maintaining the area as Neighborhood Commons.

(d) Exclusions. Except as provided above, Neighborhood Commons shall not include land designated as a Lot, land specifically excluded by the Founder in a written instrument recorded in the Register of Deeds, or land expressly dedicated to the public.

(e) The Founder's Property. The Founder may retain title to the Neighborhood Commons and the Founder has the right to modify the design of the Neighborhood Commons and to make further improvements. Real property that is owned by the Founder may be used and maintained in the same manner as Neighborhood Commons if the Founder has given exclusive or non-exclusive easement rights for use and maintenance by the Association as Neighborhood Commons, whether for an indefinite or a specified period of time. The Founder may, but is not obligated to, convey to the Association fee

title to the Neighborhood Commons, or any portion thereof and any improvements thereon at any time, and the Association shall be required to accept any such conveyance.

(f) Easement for Enjoyment. Every Owner has, and is hereby granted, an easement for appropriate use and enjoyment of the Neighborhood Commons. This easement passes with title to a Lot. Through the Owner, the Owner's residential and nonresidential Tenants, the customers and employees of the Owner and the Owner's guests also have the ability to use the Neighborhood Commons subject to the Owner's invitation and all relevant Rules and Regulations. The Owner's easement is subject to the Association's right of regulation in accordance with this Declaration and is also subject to any limitations that may be contained in the conveyance of that portion of the Neighborhood Commons to the Association.

2.2 Maintenance; Capital Improvements.

(a) Maintenance. The Association shall be responsible for the management, control and improvement of the Neighborhood Commons (including without limitation common signage, common area lighting and electricity) and shall keep the Neighborhood Commons attractive, clean and in good repair.

(b) Capital Improvements. Until all Lots in Cheshire's Town Center have been conveyed to Owners other than the Founder or its delegated entities, consent of the Founder (which shall not be unreasonably withheld) shall be required before the Association may make capital improvements to the Neighborhood Commons or may modify the uses of the Neighborhood Commons. If the capital improvement is to be paid by Special Assessment, it must be approved by Owners representing a majority of the Membership Interests other than the Founder. Any repair or replacement of existing improvements shall not be considered a capital improvement.

(c) Easement. To the extent reasonably necessary, the Association has, and is hereby granted, an easement over each Lot for maintenance of the Neighborhood Commons. The Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Neighborhood Commons that encroach on a Lot, whether due to any minor deviation from the subdivision plat of Cheshire's Town Center or the settling or shifting of any land or improvements.

2.3 Open-Air Markets, Festivals and Other Uses of Neighborhood Commons. Cheshire's Town Center is intended to be part of a vibrant community with activity that brings people together. The Board may permit use of portions of the Neighborhood Commons for various events. Examples of intended and encouraged uses include, but are not limited to:

(a) Commercial Lot Extension. The Association may temporarily license a portion of the Neighborhood Commons to the private use of a Owner for use as an outdoor café associated with a restaurant, an outdoor sales area, a special event, or other similar use associated with the Owner's use of its Lot. The Owner shall be responsible for maintaining any Neighborhood Commons so licensed and shall obtain and maintain adequate public liability insurance, subject to approval by

the Association. The license may be on a short-term basis or a long-term basis exceeding one year.

(b) Open-Air Market. The Board may rent or license space for pushcarts, kiosks, stands or temporary sales structures and may permit the erection of tents and banners. Such uses may be permitted only for special events or on a recurring basis, such as a Farmer's Market.

(c) Festivals. The Association may schedule and permit the use of the Neighborhood Commons for festivals, outdoor art exhibits, parades, block parties and other special events.

Licenses or leases may require payment of a deposit and rent or a fee to the Association, the Merchants' Council, if one is created, or other charitable or community-enriching organization. Except as provided in (a) above, no lease or license shall be for a period of longer than a year, including all renewal options.

2.4 Street Regulation.

(a) Permitted Regulation. To the extent allowed by law and the locality, the Association may limit the length of time a car may be parked and may construct speed bumps or other traffic-calming measures, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and promote pedestrian safety. To the extent allowed by law, the Association may assign or reserve parking and may require that owners or employees of businesses park at a distance from the business during business hours.

(b) Vehicles. To the extent allowed by law and the locality, the Association may regulate or prohibit the parking within Cheshire's Town Center of trucks, buses or recreational vehicles, oversize vehicles, boats, vehicles which display advertising or the name of a business, vehicles used for living accommodations while parked within Cheshire's Town Center, and vehicles which are not in good running condition.

(c) Enforcement. The Association may enforce any violation under this section in accordance with Section 4.11 and may tow, boot or bar admittance to offenders and charge the expense to the vehicle owner or operator. Any fees or fines collected under this section shall be contributed to the Association's general fund to offset expenses.

(d) Additional Services. The Association may, but is not required to, provide roving patrols, an information station or other visitor assistance.

(e) Limitation of Liability. The Association and Founder do not make any representation concerning security or safety or assume any liability for any loss or injury to persons or property.

2.5 Parking Lots. The Association shall maintain any parking lots that are part of the Neighborhood Commons. The Association may establish rules for the appropriate use of parking lots. The Founder shall have the right to record a Supplemental Declaration to address details of structured or Neighborhood Commons parking.

2.6 Additional Easements in Favor of the Association. The Association shall have

the following easements, which shall be non-exclusive, and which may be exercised concurrently with any similar easements retained by the Founder:

(a) Streets. A non-exclusive easement for use of the streets, alleys, sidewalks, parking lots and driveways.

(b) Utility Easements. A blanket easement upon, across, over, through, and under Cheshire's Town Center for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, intranet, electricity, television, security, fiber optic, broadband, cable or communication lines and other equipment. By virtue of this easement the Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement will not unreasonably interfere with each Owner's reasonable use of his or her Lot.

(c) Police Powers. A blanket easement throughout Cheshire's Town Center for private patrol services, and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

(d) Drainage. A blanket easement and right on, over, under and through the ground within Cheshire's Town Center to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health, safety or appearance or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

2.7 Purchase or Conveyance of Neighborhood Commons.

(a) Additional Neighborhood Commons. The Association may acquire additional Neighborhood Commons. The decision to acquire additional Neighborhood Commons (other than that contributed by the Founder), whether by purchase or lease or other means, shall be authorized by a two-thirds (2/3) vote of the Board of Directors. If the purchase or lease is costly enough to be considered a substantial capital expense, as determined in accordance with Section 3.5, it must be approved as described in that Section.

(b) Corrective Instruments. The Association, by approval of two-thirds (2/3) vote of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Neighborhood Commons.

(c) Conveyance of Neighborhood Commons. In addition to the rights described elsewhere in this chapter to rent or assign space in the Neighborhood Commons on a short-term basis for open-air markets, festivals, parties and other events, the Association may sell, donate or grant long-term leases for small portions of the Neighborhood Commons or exchange parts of the Neighborhood Commons for other real property inside or outside Cheshire's Town Center when the Board finds that it benefits Cheshire's

Town Center in at least one of the following two ways:

- The conveyance is intended to benefit Cheshire's Town Center in ways other than the revenue, if any, to be derived from the transaction. For instance, the Association may convey or exchange real property, if necessary, to improve access to properties within Cheshire's Town Center or to improve utility service. The Association may also convey real property to community-oriented organizations.

- The revenue to be derived is significant and the use and appearance of the Neighborhood Commons is not significantly impaired. For instance, the Association might sell or lease small amounts of space for cellular telephone transmission equipment, subject to design approval in the architectural review process; or, the Association might exchange or sell small portions of the Neighborhood Commons to allow realignment of roads or Lots.

Any decision to donate, sell, exchange or mortgage any portion of the Neighborhood Commons must be approved by eighty percent (80%) of the Members in accordance with the PCA. A transaction for lease of the Neighborhood Commons May be made by a majority of Board, but if such lease is for a term of more than one year, including all tenant renewal options, such lease may not be completed until thirty days after notice to Members of the Association and is subject to rejection by a vote of disapproval of eighty percent (80%) of the Members.

(d) Dedication. If any portion of the Neighborhood Commons is utilized for roads and has not previously been dedicated to the public, the Board may, by majority vote, cause the Association to convey title to or dedicate the Neighborhood Commons utilized for roads to the appropriate public authority. Any other dedication of the Neighborhood Commons must be approved in the same manner as a conveyance of the Neighborhood Commons.

(e) Condemnation. If all or any part of the Neighborhood Commons is taken by, or an offer is accepted in lieu of condemnation from, any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board shall have the right to act on behalf of the Association with respect to any negotiation or litigation relating to the offer or taking.

(f) Limitation. Except as specifically permitted by this Declaration and the zoning approval, as such may be amended from time to time, there shall be no commercial use of the Neighborhood Commons, nor shall the Neighborhood Commons be subdivided or sold.

2.8 Damage or Destruction of Neighborhood Commons or Improvements by an Owner.

(a) If any Neighborhood Commons or Improvements on a Neighborhood Commons is damaged or destroyed by an Owner, Occupant or Tenant of a Lot within Cheshire's Town Center, or by family members, Guests (but not including individuals in Cheshire's Town Center as customers or clients of the Owner) or agents of the Owner, Occupant or Tenant, the Owner shall be liable for

such damage or destruction and the Owner must, within fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner and restore any damaged Neighborhood Commons, Improvement or facility to its existing state before the damage or destruction occurred. In circumstances where the Association or the Founder determines that a shorter response period is appropriate, the fifteen (15) day period may be shortened. If the Owner does not repair the damage as described above, then the Founder or the Association may repair the damage at the Owner's expense. The Owner will also be charged a management fee if the Association or the Founder is required to repair the damage on behalf of the Owner because the Owner does not repair the damage. If the damage is unsightly or dangerous, as determined by the Founder or the Association at its sole discretion, the Founder or the Association has the right to repair the damage immediately and charge the Owner responsible for the damage for the cost of the damage plus a management fee after the repair has been completed. The cost of the repairs becomes a Special Assessment on the Lot of the Owner and constitutes a lien on the Owner's Lot. This lien is collectible in the same manner as other Assessments set out in the Declaration. In addition, the Founder or the Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this Section.

(b) If an Owner's, a Tenant's, or an Occupant's business attracts customers or clients who engage in damaging or destructive behavior resulting in damage to or destruction of any Neighborhood Commons or Improvements on Neighborhood Commons, and such damage or destruction occurs on at least three (3) occasions, the Association may provide 20-days' notice to the Owner that the Owner shall be liable for all future such acts of damage or destruction performed by the Owner's, Tenant's, or Occupant's customers or clients.

2.9 Limitation of Liability. The Association is not an insurer of safety and makes no warranty and assumes no liability for any loss or injury to persons or property.

2.10 Usage Procedures

(a) Usage Fees. Deposits and/or fees may be required by the Association for use of some areas of the Neighborhood Commons for certain types of uses; provided that such fees or deposits are applied equally to all similarly situated users without regard to the Association in which they are members.

(b) Scheduling and Gatherings. Members of the Association may use the Neighborhood Commons for events with the written permission of the Association. Scheduling and arrangements for the use of all Neighborhood Commons controlled by the Association must be made through that Association and shall be subject to rules regarding traffic control, parking, clean-up, recycling, safety and obtaining all required permits. The Association may grant exclusive use of portions of the Neighborhood Commons for reasonable periods of time.

(c) Rights of Tenants and Occupants. Tenants and Occupants of Lots shall have the right to use the easement of the Owner whose Lot they occupy provided that, (i) the Owner is and will be responsible for the manner of the Tenant

or Occupant's use, and (ii) the Owner may withdraw consent for the use by written notice to the Association.



FINANCE

3.1 Fiscal Year. The fiscal year of the Association shall begin January 1 of each year, unless the Board selects a different fiscal year.

3.2 Budget Items. The budget shall estimate total expenses to be incurred by the Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The Association may build up and maintain reserves for working capital, contingencies and replacement of the Neighborhood Commons, which shall be included in the budget and collected as part of the annual General Assessment. The budget may also include reasonable amounts, as determined by the Board, for working capital for the Association. If the Neighborhood Commons are taxed separately from the Lots, the Association shall include such taxes as part of the budget. Fees for professional management of the Association, accounting services, legal counsel and other professional services may also be included in the budget.

3.3 Preparation and Approval of Annual Budget.

(a) Adoption by Board. At least two months before the end of the fiscal year, the Board shall, by majority vote, adopt a budget for the coming year and set the annual General Assessments at a level sufficient to meet the budget. At least one month before the fiscal year to which the budget applies, the Board shall send to each Owner a copy of the budget in reasonably itemized form, which shall include the amount of General Assessments payable by Owners according to Membership Interest.

(b) Budget Review. If General Assessments on Lots are to be increased by more than 15% per Lot when compared to the previous year's General Assessment, and review is requested by the President, the Board, or by petitions signed by at least 10% of all Owners within thirty (30) days after the budget is delivered to Owners, the Board is to call a meeting to present the budget and to answer any questions. After presentation, the budget is deemed approved unless a quorum of the Owners is present in person or by proxy and Owners representing a majority of the existing Membership Interests reject the budget. If the budget is rejected, the Board must approve a new budget within ten (10) days and send a copy to each Owner. If, under the new budget, the General Assessments are to be increased by more than 15% per Lot, then the budget must be reviewed again according to the provisions of this paragraph.

(c) Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under Section 3.3(b), shall not waive or release an Owner's obligation to

pay General Assessments whenever the amount of such assessments is finally determined. In the absence of a current Association budget each Owner shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise. Once the Board has prepared and adopted an annual budget for any fiscal year, the budget and the Assessments set forth under that budget shall be retroactive to the first day of that fiscal year and Owners shall be responsible for all Assessments established for that fiscal year.

3.4 Unbudgeted Expenses. Extraordinary expenses that are not originally included in the annual operating budget, or that represent unanticipated increases over budgeted items, may be paid in either of the following ways:

(a) Special Assessment. The Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Declaration or the law requires the Association to pay, or for deferred maintenance for which designated reserves are insufficient. The Board may choose to spread the Special Assessment over a period of up to five years.

(b) Reserves. If specifically authorized by the Board, reserves intended for another purpose may be used for extraordinary expenses that are not included in the annual budget. A Special Assessment may be used to pay back the reserve fund.

3.5 Capital Improvements.

(a) Approval. The Board may approve expenditure of funds for capital improvements, as further provided in Section 2.2. Any substantial capital improvement to the Neighborhood Commons approved by the Board must be ratified by a majority of the Owners. If the Owners approve the substantial capital improvement, the Board shall determine whether it shall be paid from General Assessments or by Special Assessment.

(b) Substantial Test. A capital improvement shall be considered substantial if the cost to the Association of the improvement is more than six percent (6%) of the Association's annual budget, or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of the Association's annual budget.

(d) Founder Rights. This section shall not limit the right of the Founder to make improvements to the Neighborhood Commons.

3.6 Bookkeeping; Accounts; Use of Funds. The Association shall maintain a general fund and shall keep books and records of its expenses in performing its duties under this Declaration. Reserves shall be kept separate from other Association funds, either in a single account for all reserves or separated by purpose. All Assessments, management fees, professional fees, fines and other moneys collected under this Declaration shall be used only for maintenance, repair and replacement of the Neighborhood Commons, reserves, payment of taxes, government fees, capital improvements and other uses authorized by this Declaration, including legal and professional fees.

3.7 Assessments. The cost of meeting the Association's operating expenses is

divided among all the Owners by the Assessments levied on Lots:

(a) General Assessments. General Assessments are used to fund the Association's budget. The fractional allocation of the common expenses of the Association may be calculated for each Lot within Cheshire's Town Center on the basis of the Lot's Member Interests, with interests for Non-residential Committee Members based on the relative number of Development Units as allocated at the time of purchase by the Founder until all non-residential Lots in the Community have been conveyed to Owners other than the Founder or its designated entities, or by the Association thereafter. The Founder shall not pay General Assessments on unimproved real property to which it holds title, subject to the Declaration or any relevant Supplemental Declaration unless and until the Period of Founder Control has ended. General Assessments for undeveloped Lots of Members other than Founder shall be .25% of the assessment that would otherwise apply.

(b) Special Assessments. Special Assessments may be imposed for unbudgeted emergency expenses in accordance with Section 3.4, or for capital improvements in accordance with Section 3.5. Special Assessments are allocated in the same manner as General Assessments.

(c) Individual Lot Assessments. The Association may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any special services to that Lot, or any other charges designated in this Declaration as an Individual Lot Assessment. The Board may approve allocation of Individual Lot Assessments in a manner other than by Membership Interest.

(d) Subzone Assessments. The Association may levy a Subzone Assessment at any time against a particular Lot for the purpose of defraying, in whole or in part, the cost of expenses approved for a Subzone in which the Lot is located, in accordance with Section 1.9. No new Subzone Assessment shall be imposed or increased without the consent of the Committee to which the Subzone belongs.

The Association shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments. The annual General Assessments shall begin on the day of conveyance of the first Lot to an Owner other than the Founder, prorated to the month of closing.

3.8 Capital Contribution. At the closing and transfer of title of each Lot to the first Owner other than the Founder or a licensed builder holding the Lot for construction of a building for sale, for resale, the purchasing Owner shall contribute an amount equal to three months' installments of the General Assessment. This contribution is to be deposited in the general funds of the Association for start-up expenses of the Association and for working capital for the Association and shall not be considered as a pre-payment of General Assessments. The contribution described in this Section 3.8 shall not apply to any transaction in which the Founder's Mortgagee, its subsidiary or affiliate, acquires title or through foreclosure or deed in lieu of foreclosure or conveys title to a third-party purchaser after such acquisition, or any other Mortgagee if that Mortgagee acquires

title to real property in Cheshire's Town Center as the result of foreclosure or deed in lieu thereof.

3.9 Collection of Assessments.

(a) Obligation for Assessments. Each Owner is required to pay all Assessments (General Assessments, Special Assessments, Individual Lot Assessments, Subzone Assessments, and Institute Contributions) assessed to that Lot. The Association has the right to institute reasonable policies concerning late fees and interest, which the Owner is also required to pay. Assessments are assessed annually, but the Board may permit payment of the Assessments in annual, quarterly, or monthly installments. Owners shall pay Assessments in the manner and on the dates the Board establishes.

(b) Collection Costs. If any Assessment is still delinquent one week after the Association has delivered a warning letter to the Owner's last known address, the Association has the right to also charge the Owner with the Association's collection costs, including a reasonable attorney's fee, whether or not suit is brought. The warning letter must state the amount of Assessments owed and that failure to respond by a specified date at least seven (7) days from the date of the letter will result in such additional charges.

(c) Legal Remedies. The obligation to pay Assessments and costs is both a personal obligation of the Owner and a lien on the land. (The past-due Assessments, plus late-fee, interest to the time of collection and the Association's attorney's fees and other collection costs are called the "Assessment Charge.") The Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens.

(d) Acquisition of Lot. The Association may bid for an interest in any Lot foreclosed at such foreclosure sale, may acquire a Lot, and may subsequently hold, lease, mortgage and convey the acquired Lot.

(e) Other Remedies. The Association shall have the right to suspend the voting rights and right to use of the Neighborhood Commons by an Owner and may prohibit the leasing of the Lot or attach rentals from the Lot for any period during which any Assessment against the Lot remains unpaid.

3.11 Founder's Assessments; Founder's Guarantee. The Founder or its designated entities shall be excused from payment of General Assessments during the Guarantee Period as defined below, provided however, that should the PCA be deemed to preclude waiver of General Assessments for the Founder shall be relieved of the guarantee provided in this section 3.11 and credited with any amounts paid pursuant hereto. The Founder guarantees to Owners that their General Assessments during the Guarantee Period shall not exceed the initial General Assessment (subject to the

increases set forth below). The Founder agrees to pay any Association expenses incurred during the Guarantee Period and normally paid through General Assessments that exceed the amount produced by the General Assessments during that time. The Guarantee Period shall begin upon the recordation in the Register of Deeds, of the first deed of conveyance of a Lot in Cheshire's Town Center and shall end at the conclusion of the third subsequent full fiscal year (so that three full fiscal years are guaranteed). The Guarantee Period shall then be automatically extended for successive six-month periods up to an additional three years unless terminated upon written notice by the Founder to the Association at least thirty (30) days before the end of then-current Guarantee Period. During the initial three years of the Guarantee Period, increases in the General Assessments may not exceed 15% per year.

Notice to Purchasers: If there are any Assessments unpaid on the Lot, you will automatically become liable for those Assessments when you accept a deed. **You should contact the Association before purchasing a Lot to make sure no Assessments are owed.** You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The Treasurer of the Association or managing agent if one has been employed by the Board, upon request of any Owner or contract purchaser, will furnish a certificate signed by a member of the Board stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate, when co-signed by the secretary of the Association, may be relied upon by a good faith purchaser or Mortgagee.



REGULATION OF NON-RESIDENTIAL AND RESIDENTIAL USES

4.1 Generally. Each Owner, by acceptance of a deed to real property within Cheshire's Town Center or any other right to utilize any portion of Cheshire's Town Center for commercial purposes, recognizes that the Owner's property is part of Cheshire's Town Center and the larger community of The Town of Cheshire. Within Cheshire's Town Center, the proper balance of types of retail stores and other businesses, as well as the quality of those businesses, is critical to the success of Cheshire's Town Center and the entire Community. The conditions of this Declaration regarding operation of the business upon an Owner's Parcel within Cheshire's Town Center are part of the consideration for the granting of easements for use of the Neighborhood Commons to Owners and the granting of deeds from the Founder to Owners or granting use privileges to other Owners. These restrictions shall run with the land and be binding upon Owners and their successors and assigns. Owners shall be responsible for assuring the compliance of their tenants through proper lease language, and violation of the conditions of this Declaration by a tenant shall be deemed a violation by the Owner landlord as well. The terms of this part 4 shall not be amended without the consent of the Non-residential Committee for any provision directly impacting non-residential properties and the consent of the Residential Committee for any provision directly impacting residential properties.

4.2 Merchants' Council.

(a) Purpose. If created, the Merchants' Council shall promote Cheshire's Town Center for the mutual benefit of all businesses. Its responsibilities shall include advertising, special event programming and other promotional activities and all commercial signage for Cheshire's Town Center other than signs on individual businesses.

(b) Organization. Members of the Merchants' Council do not need to be Members of the Association and may include Commercial Parcel Owners, business owners and managers conducting businesses within Cheshire's Town Center or within one mile thereof. The Merchants' Council shall originally operate as a committee of the Association. However, the Owners may, by approval of Owners representing a majority of the Membership Interests, choose to incorporate the Merchants' Council and operate it as a separate entity.

(c) Membership; Board of Directors. The Merchants' Council's board

of directors shall be selected by the Non-residential Committee from among the Merchants' Council membership. By a vote of Owners representing a majority of the Membership Interests in the Non-residential Committee, the Non-residential Committee may adopt bylaws for the Merchants' Council's operation, which may include a different method of selecting a board of directors.

(d) Funding. The Merchants' Council board of directors shall propose an annual budget to the Association. At the discretion of the Association, the Merchants' Council shall be entitled to receive a portion of the General Assessments or the Non-residential Subzone Assessment. The Merchants' Council may also receive revenue from special events and services.

(e) Consent of the Founder. During the Period of Founder Control, all actions of the Merchants' Council shall be subject to the Founder's review and approval, which shall not be unreasonably withheld or delayed.

(f) No Obligation. Neither the Founder nor the Association shall have any obligation to create the Merchant's Council or to maintain after if it is created. Participation and membership in the Merchant's Council shall be voluntary.

4.3 Appearance, Hours of Operation. The Non-residential Committee may regulate days and hours of operation but shall not require operating hours less than nor in excess of those business hours normal in the region for similar types of businesses. The Association may also regulate store window displays and general décor and lighting. The entrance and interior of the business shall be kept clean and inviting in appearance at all times. Wall and floor coverings, displays and all other furnishings shall be maintained in first-class condition.

4.4 Approval of Advertising. All advertising for the business to be conducted on the Lot, whether for print, television, radio, handbills, outside sign or other media, shall be subject to the Non-residential Committee's standards and regulations in addition to any review required by the Design Standards. The Association may prohibit or regulate the distribution of handbills within Cheshire's Town Center.

4.5 Signage. A business shall display on the exterior of the building or upon any exterior glass surfaces or within twenty-four (24) inches of any window only those signs, advertising placards, names, insignia, trademarks, descriptive material or other identification that are specifically approved by the Non-residential Committee and, as applicable, the Design Committee. No hand-lettered signs may be displayed unless professionally prepared.

4.6 Leases. The provisions of this Declaration, including but not limited to this Part 4, shall be deemed included in any lease of commercial space within Cheshire's Town Center. If any tenant is in violation of these provisions, the Association may enforce these provisions against the Owner landlord, the tenant or both, and is granted the right as the Owner's agent and attorney in fact in accordance with Section 4.11 to evict any tenant in violation of these provisions.

4.7 Prohibited Uses.

(a) Nuisances, Unlawful Use. No nuisance or immoral, improper,

obscene, offensive or unlawful use shall be permitted to exist or operate on any Lot. The Non-residential Committee may from time to time define and determine unacceptable uses. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with, by and at the sole expense of the Owner.

(b) Insurance. Nothing shall be done or kept on any Lot or the Neighborhood Commons that will increase the rate of, or result in cancellation of, insurance for the Neighborhood Commons or any other Lot or its content, without the prior written consent of the Association.

(c) Soliciting. The Association may regulate or prohibit soliciting within Cheshire's Town Center.

4.8 Attractiveness and Safety of Lots. Each Owner shall keep all parts of its Lot in good order and repair and free from debris. The Association may regulate placement and maintenance of garbage and trash containers, and fuel or gas storage tanks and other matters affecting the attractiveness or safety of Lots. No sign, advertisement or notice of any type or nature whatsoever (including "For Sale" or "For Rent" of "Going Out of Business" signs) shall be erected or displayed on any Lot or portion of the Neighborhood Commons unless specifically permitted by the Design Standards or pursuant to approvals granted thereunder. For parking lots that are privately owned, the Owner of the lot shall be responsible for its maintenance. The Association may set standards for parking lot maintenance and may require the Lot Owner to maintain the Lot in accordance with the standards. No obstruction to visibility at street intersections shall be permitted.

4.9 Pets. Pets may be kept by an Occupant on a Lot but only if such pets do not cause an unsafe condition, unreasonable disturbance or annoyance, or public nuisance within Cheshire's Town Center. Each Occupant and the Owner of the Lot shall be held strictly responsible to immediately collect and properly dispose of wastes and litter of Occupant's pets. The Association reserves the right to regulate the number and size of pets; to prohibit the keeping of animals other than customary household pets, which it may define, acting reasonably; to designate specific areas within the Neighborhood Commons where pets may be walked and to prohibit pets on other areas; to require pets to be on leash; and to restrict the rights of tenants to keep pets.

4.10 Rules and Regulations. The Association may from time to time adopt rules or amend previously adopted Rules and Regulations governing the details of the operation, use, maintenance and control of the Lots, Neighborhood Commons and any facilities or services made available to the Owners. This right shall include without limitation the right to approve rental agents, contractors and subcontractors who do business within Cheshire's Town Center. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least 10% of the Owners, a meeting of Owners may be called and, if a quorum is obtained, Owners representing a majority of the Membership Interests present at the meeting may repeal any rule or regulation. No rule governing non-residential properties shall be adopted without the consent of the Non-residential Committee and no rule governing residential properties shall be adopted without the

consent of the Residential Committee. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within Cheshire's Town Center or furnished to each Owner.

4.11 Committee Decisions during the Period of Founder Control. During the period of Founder Control, the Founder shall have the right to overrule any decision by a Committee and substitute the decision by the Association Board. Notwithstanding the forgoing, decisions reserved to Members as a whole pursuant to the PCA, shall govern as provided in the PCA.

4.12 Enforcement.

(a) Owner's Responsibility. Each Owner and Owner's invitees and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Association. Each Owner shall be responsible for assuring such compliance, and any violation by guests or tenants may be considered to be a violation by the Owner.

(b) Notice, Hearing and Fines. Any Owner who is believed to be in violation of this Declaration or the Rules and Regulations shall be given notice of such violation and an opportunity to cure the violation. If the violation is not cured within the time frame established under the notice, the Owner shall be provided an opportunity to be heard before the Board. After such hearing, the Association shall have the right to assess fines, up to a maximum of $1000 for a single violation or $100 per day for a continuing violation (to be adjusted according to increases in the cost of living after the date of this Declaration) and may restrict the Owner's use of the Neighborhood Commons for up to sixty (60) days or until remedied, whichever is longer. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. The Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Lot as an Individual Lot Assessment. Any fines collected shall be contributed to the general fund of the Association.

(c) Occupant Violations. If a Occupant (including tenants) is believed to be in violation of the Declaration or Rules and Regulations, the Association shall notify the Owner landlord and Occupant of such violation and shall provide an opportunity to cure the violation. If the violation is not cured within the time frame established in the notice, the Owner and Occupant shall be given an opportunity to be heard before the Board. After such hearing, the Association may assess fines against the Owner landlord as provided in paragraph (b) above. In addition, if the violation continues for ten (10) days after notice to the Owner of the findings, or if the Occupant materially violates either Declaration or Rules and Regulations more than once in any period of twelve (12) months, the Association shall have the right to evict the Tenant. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Lot Assessment.

(d) Corrective Action for Lot Maintenance. If the Association determines after notice and hearing that any Owner has failed to maintain any part of the Lot (including the yard and any wall,

fence, building, garden structure or other structure) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration and applicable Rules and Regulations, the Association shall notify the Owner of its findings and may assess fines as provided in paragraph (b). If the violation continues for ten (10) days after notice to the Owner, the Association shall have the right without liability to enter upon such Lot to correct, repair, restore, paint and maintain any part of such Lot and to have any objectionable items removed from the Lot. The Association may reduce or eliminate the time for notice if it believes the condition creates a safety hazard. All costs related to such action shall be assessed to the Owner as an Individual Lot Assessment.

(e) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to charge management fees for actions taken on behalf of Owners and to bring suit to enforce the Declaration and Rules and Regulations, as described in Section 6.5.

4.13 Structural Party Walls and Other Party Structures.

(a) Party Walls. Each Owner grants to the Owner of each adjacent Lot the right and easement to maintain and to utilize any exterior or interior wall that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the buildings, or parts of a building, on more than one Lot. Maintenance of each surface of the party wall shall be the sole responsibility of the Owner whose building faces such surface. Each Owner shall be liable and responsible for repairs if, in connection with that Owner's use and maintenance of the party wall, or that of his agents or invitees, the Owner or his agents or invitees damages the adjacent Owner's building or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

(b) Party Structures. In addition to party walls described above, each fence, driveway or similar structure that is constructed as a part of the original construction of structures on Lots, and any part of which is placed on the dividing line between separate Lots and intended to serve the Lots, shall be a party structure. The cost of maintaining such party structures shall be shared equally by the Owners of the Lots served by the party structure. However, each Owner shall be liable and responsible for repairs if, in connection with that Owner's use and maintenance of the party structure, or that of his agents or invitees, the Owner or his agents or invitees damages the party structure.

(c) Modifications. If an Owner wishes to make a changes to any party wall or party structure that may affect the appearance of the wall or structure from the adjoining Owner's side, or in any way may affect the adjoining Owner's use and enjoyment of the wall or structure, the Owner desiring to make the change must obtain written approval of the adjoining Owner, in addition to any approvals that may be required under the Operating Agreement or this Declaration, prior to undertaking any changes.

(d) Exterior Walls. An exterior wall which supports the building on only one Lot shall not be considered a party wall. The Association may make Rules and Regulations concerning use and maintenance of such walls, including

assigning responsibility between the adjoining Owners for painting and repair and granting access over the adjoining Lot as reasonably necessary to maintain the wall, where no specific party wall covenants addressing these subjects have been created between such adjoining Owners. All such maintenance and repair shall be in accordance with the Association's Rules and Regulations.



INSURANCE AND CASUALTY

5.1 Review of Coverage. The Board shall review limits of coverage, and the cost of coverage, for each type of insurance at least once each year. The Board may reasonably choose after such analysis not to carry certain coverage, or to modify limits of coverage or assume a larger deductible. Notice of any such decision shall be sent to the Owners on a timely basis.

5.2 Casualty Insurance. The Board should consider whether the Neighborhood Commons include structures or other improvements that can and should be insured against casualty loss. The Board may obtain casualty insurance on the Neighborhood Commons for fire damage. Endorsements for extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost.

5.3 Public Liability. The Board may obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Neighborhood Commons. At the Board's discretion, such coverage may include easements, such as walkways, which benefit the Association. Whenever practicable, such liability insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board or other Owners.

5.4 Director Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board and advisory members in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

5.5 Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may determine or as may be requested from time to time by Owners representing a majority of the Membership Interests. The Board shall purchase all insurance required by section 47F-3-113 of the PCA within the timeframes required thereby and shall comply with the provisions thereof in the application of proceeds from any insurance policies, including the requirement that proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

5.6 Lot Coverage. Each Owner shall obtain casualty insurance for improvements on the Lot. Coverage shall

be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements. If requested, Owners shall provide evidence of such insurance to the Association. The Association may require Commercial Lots to carry additional insurance, including but not limited to comprehensive general liability and, where applicable, liquor liability and special coverage for machinery and equipment.

5.7 Repair and Reconstruction after Fire or Other Casualty.

(a) Neighborhood Commons. If fire or other casualty damages or destroys any of the improvements on the Neighborhood Commons, the Board shall arrange for and supervise the prompt repair and restoration of the improvements, unless the Board approves other plans. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(b) Lots. If fire or other casualty damages or destroys a building or any other improvements on a Lot, the Owner of that Lot shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Board. If the Owner fails to clean and secure a Lot within thirty (30) days after a casualty, the Association may, in accordance with the provisions of Section 4.11(d), remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Lot safe and attractive. The cost of such clean up shall be assessed to the Lot Owner as an Individual Lot Assessment.



GENERAL TERMS

6.1 Amendment.

(a) By Members. After the Period of Founder Control this Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Association, certifying approval in writing by Owners representing sixty-seven percent (67%) of the Membership Interests. Rights reserved to the Founder may not be amended during the Period of Founder Control without the specific written consent of the Founder.

(b) By the Founder. The Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Declaration's provisions or correct errors, (iv) to subject additional real property to this Declaration or in connection with Supplemental Declarations or to with the Town Center, (v) to change a name pursuant to the Operating Agreement, (vi) to conform to applicable laws, or (vii) for any reason during the Period of Founder Control.

(c) Limitation. Whenever any action described in this Declaration requires approval of greater than two-thirds (2/3) of the Membership Interests or approval by a Committee, amendment of that provision shall require the same percentage vote or Committee approval as would be required to accomplish that action directly.

(d) Recording. Any amendment shall take effect upon recording in the Register of Deeds.

6.2 Duration; Termination. The covenants and restrictions and other provisions contained in this Declaration shall run with and bind the Town Center and shall inure to the benefit of and be enforceable by the Association, the Founder and all Owners within the Town Center, their respective legal representatives, heirs, successors or assigns for twenty years, and shall be automatically extended for each succeeding ten year periods unless an instrument signed by Owners representing 90% of the Membership Interests in the Association shall have been recorded and so long as Founder owns any real property within the Town Center, written consent of the Founder is given, agreeing to terminate the Declaration as of a specified date.

This Declaration may also be terminated in any of the following ways:

(a) Unanimous Consent. The Declaration may be terminated at any time by the consent in writing of all Owners and

the Founder so long as Founder owns any real property within the Town Center.

(b) Dedication of Neighborhood Commons. The Declaration may be terminated by a vote of Owners representing two-thirds of the Membership Interests and consent of the Founder during the Period of Founder Control, if the Neighborhood Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government.

6.3 intentionally omitted

6.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Town Center as an integral part of the Community but with separate needs as an area of primarily commercial character. If necessary, in the event of a conflict, the provisions shall be interpreted in the manner, which gives the Town Center the greatest autonomy. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

6.5 Enforcement of Declaration.

(a) Chancellor. When problems with covenant enforcement arise, the Board or any tenant or Owner may file a request with a Chancellor to hear the issue. If requested by the Board or the Chancellor to which the case is assigned, and if there is more than one Chancellor, the case will be heard by more than one Chancellor, sitting as a panel. The Chancellor or panel will notify the Owner or tenant who is believed to be in violation, as well as the Owner, if different, and set a convenient date for a mediation session.

(b) Mediation Session. The object of the mediation session is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions must be conducted with tact, dignity and respect. The Chancellor or panel has the discretion to decide if the complaining party should participate in the mediation session.

(c) Agreement. The Chancellor or panel is to evaluate whether the resident, tenant, occupant, or Owner has caused an unreasonable disturbance or other violation, and, if so, to help reach a resolution within the general principles set out in this Part. If the parties reach agreement, the agreement is to be summarized in writing and signed by the parties. The Chancellor's office is to keep a copy of the agreement. The Chancellor or panel has the right to consider whether the same problem has arisen in the past and whether the Owner or commercial tenant has complied with previous agreements in evaluating the current agreement. If agreement is not reached, or if the parties do not comply with the agreement, the Chancellor or panel may make a report and recommendation to the Board for further action.

(d) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its real property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Founder or the Association may bring an action for damages, specific performance, declaratory

decree or injunction, or any other remedy at law or in equity.

(e) Initiation of Litigation by the Association. The Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of 75% of the Member Interests, except that no such approval shall be required for actions or proceedings:

(i) initiated during the Period of Founder Control;

(ii) initiated to enforce the provisions of this Declaration, including without limitation, collection of assessments and foreclosure of liens;

(iii) initiated to challenge ad valorem taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This subsection shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(f) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

(g) Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Founder or the Association in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Lot Assessment to the Owner against whom such action was taken.

6.6 Assignment of Founder Rights. The Founder may assign all or any portion of its rights or obligations at any time to a successor or assign, or to the Association. If the Founder conveys all of its real property within the Town Center without assigning its rights, then the Founder's rights shall be automatically assigned to the Association.

6.7 Notices. Any notice required to be sent to an Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Lot and, if different, to the last known address of the person who appears as Owner of the Lot as that address is stated on the records of the Association at the time of the mailing.

6.8 Captions; Capitalized Terms; Gender; Graphics. The paragraph headings and captions appearing in this Declaration are inserted only as a matter of convenience and for reference and in no way limit or otherwise affect the scope, meaning or effect of any provisions of this Declaration. Terms that are capitalized in this Declaration shall have the meaning set forth in this Declaration unless the context plainly makes such meaning inappropriate. Whenever the term "including" occurs in this Declaration, it shall be interpreted broadly and without limitations as "including but not limited to". Whenever the singular number is used in this Declaration, the same shall also include the

plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context requires. Graphics or renderings included as a part of this Declaration have no regulatory purpose and do not represent a commitment to a particular outcome or result.

6.9 Consent of Mortgagees.

(a) When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. When Mortgagees are specifically referenced, such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by a mortgage on a Lot. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a Mortgagee shall be adopted without the prior written consent of the Mortgagees. This section shall not be construed, however, as a limitation upon the rights of the Founder or the Lot Owners to make amendments other than those directly concerning mortgages.

(b) Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within 30 calendar days of receipt of request for consent shall be deemed given.

6.10 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of North Carolina, without regard to North Carolina's conflict of law provisions.

6.11 Community Operating Agreement. If in any instance the provisions of this document are in conflict with the provisions of the Community Operating Agreement, the provisions of the Community Operating Agreement shall control, to the extent not in violation of any applicable North Carolina law. The Community Operating Agreement shall be deemed a part of the Declaration.



GLOSSARY

Applicability: This Part applies to all capitalized terms within this Declaration. Terms that are used in only one Part may be defined in that Part.

7.1 Articles. The Articles of Incorporation of the Association.

7.2 Assessments. As further described in sections 3.7 and 3.9, "Assessments" is the collective term for the following charges:

> ***(a) General Assessment***. The amount distributed among all Owners to meet the Association's annual budgeted expenses.
>
> ***(b) Special Assessment***. A "Special Assessment" may be charged to each Lot for capital improvements or emergency expenses.
>
> ***(c) Individual Lot Assessment***. A charge made to a particular Lot for charges relating only to that Lot.
>
> ***(d) Subzone Assessment***. A charge made to a particular Lot for expenses relating only to Lots in that Subzone.
>
> ***(e) Capital Contribution***. The "Capital Contribution" is paid upon conveyance to the first Owner other than the Founder or a builder.

7.3 Board. The executive board of the Association.

7.4 Association. The Association is the Cheshire's Town Center Association Inc., a North Carolina nonprofit corporation.

7.5 intentionally omitted

7.6 Town Center. The Town Center is all that real property which has been made subject to this Declaration, plus additions and less withdrawals made pursuant to the terms of this Declaration.

7.7 Bylaws. The Bylaws of the Association.

7.8 Non-residential Committee. The committee made up of all of the Owners of Lots with commercial uses, maker spaces, live-work, civic and multi-family rental real property uses.

7.9 Residential Committee. The committee made up of all of the Owners of Lots with residential uses including Owners of condominium Lots in mixed use buildings.

7.10 Community Operating Agreement. Cheshire's Town Center Community Operating Agreement, recorded in the Buncombe County Register of Deeds, as amended from time to time. The Community Operating Agreement establishes architectural control, reserves certain rights to the Founder and places other restrictions on the use of the Town Center.

7.11 Community. That area shown on Exhibit A to this Declaration.

7.12 Development Unit. A "Development Unit" consists of 1,000 gross square feet of enclosed building area.

7.13 intentionally omitted

7.14 Neighborhood Commons. As further described in Section 2.1, the common areas and common elements owned by the Association and in some cases the Founder intended for the common use and enjoyment of all Owners, tenants and guests.

7.15 Founder. The "Founder" is C.S. Ragan LLC, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Town Center. The Founder is also the Declarant for all purposes of the North Carolina Planned Community Act, General Statutes Chapter 47F, as amended. The Founder may also be an Owner for so long as the Founder is record owner of any Lot.

7.16 Founder's Mortgagee. The "Founder's Mortgagee", if any, is holder of the Founder's development loan, or its successors or assigns, or any holder of indebtedness that refinances the Founder's Mortgagee's development loan. A mortgagee involved with the purchase of a Lot by a builder or a third-party purchaser for a commercial use shall not be a successor or assign of the Founder's Mortgagee for purposes of this definition.

7.17 intentionally omitted

7.18 Member. Each Owner is a "Member" of the Association, as provided in Part 2 of this Declaration.

7.19 Membership Interest. As further provided in Section 1.4, both voting rights and Assessments shall be based on Membership Interest

7.20 Merchant's Council. The "Merchants' Council" is organized under Section 4.2 as a committee of the Association to promote the Town Center for the mutual benefit of all businesses.

7.21 Mortgage. A deed of trust.

7.22 Mortgagee. The holder of a mortgage.

7.23 intentionally omitted

7.24 intentionally omitted

7.25 Declaration. This instrument and the Cheshire's Town Center Community Operating Agreement.

7.26 Occupant. Any Person who occupies and/or who is entitled to use a part of the Town Center as Owner, tenant or licensee, or in any other capacity other than as the beneficiary of an easement or an invitee.

7.27 Owner. The record Lot owner, whether one or more persons or entities, of the fee simple title to any Lot within the Town Center. "Owners" shall not include those having such interest merely as security for the performance of an obligation.

7.28 Lot. Any plot or parcel of land designated for separate ownership or occupancy in the mixed-use area other than

the Neighborhood Commons, and a unit in a condominium association.

7.29 Period of Founder Control. That period of time from the date of the recording of this Declaration until the later of the date (i) upon which all of the Lots have been sold to an Owner other than the Founder or its designated entities, or (ii) Founder voluntarily relinquishes control. During the Period of Founder Control, the Founder has the right to appoint the majority of the Directors and such other rights as are described herein. To the extent any right reserved to Founder or granted in the Declaration is constrained, restricted or subject to termination by the PCA and not permitted to be expanded by the Declaration, then the rights of Founder shall be deemed constrained, restricted or subject to termination in accordance with the PCA.

7.30 Person. Any natural person, corporation, partnership, trust, limited liability company, or other entity.

7.31 Subzone. A portion of the Town Center with particular maintenance requirements, as further described in Section 1.9.

IN WITNESS WHEREOF, the undersigned does hereby make this Declaration and has caused this Declaration to be executed as of the day and year first above written in the presence of me, Notary Public and the undersigned witnesses, after due reading of the whole.

C.S. Ragan, LLC

Witnesses: BY: _____

_____ NAME: _____

_____ TITLE: _____

_____
Notary Public
Printed Name: _____
Notary ID/Bar Roll #: _____
My Commission expires: _____

Exhibit A

Community

The Community shall include the real property described on that certain plat entitled "_____" prepared by _____, dated _____ and duly recorded on _____ in the public records of the _____, _____ in Map Book _____.

Exhibit B

Cheshire's Town Center: Property Subject to the Declaration

The Cheshire's Town Center shall include _____ as described on that certain plat entitled "_____" prepared by _____, dated _____ and duly recorded on _____ in the public records of the _____, _____ in Map Book _____.