

CHESHIRE'S TOWN CENTER
COMMUNITY OPERATING AGREEMENT

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C.S Ragan, LLC (the "Founder"), has created this **CHESHIRE'S TOWN CENTER COMMUNITY OPERATING AGREEMENT** as of the _____ day of _____, 2019. The Founder shall be deemed the "Declarant" for purposes of GS Chapter 47F Planned Community Act (the "PCA").

DECLARATION:

The Founder, who is the record owner of all of the real property in the Town of Black Mountain, Buncombe County, North Carolina, described on Exhibit A (the "Community"), submits the real property described in Exhibit B and future additions as described below (the "Cheshire's Town Center") to this Cheshire's Town Center Community Operating Agreement and to the North Carolina Planned Community Act General Statutes Chapter 47F, as amended (the "PSC") . The Founder declares that the real property subject to this Cheshire's Town Center Community Operating Agreement (the "Community) shall be held and conveyed subject to the covenants, restrictions and easements of this Cheshire's Town Center Community Operating Agreement (the "Community Operating Agreement"), and of the Cheshire's Town Center Association Declaration recorded contemporaneously herewith and as amended according to its terms (the "Declaration") all of which shall run with the land and bind all owners (the "Owners") of real property within the Cheshire's Town Center, their heirs, successors and assigns, and all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the Cheshire's Town Center. In addition, the Founder declares that the real property subject to this Center Operating Agreement shall be developed pursuant to the Master Plan for the Cheshire's Town Center as approved by The Town of Black Mountain, as amended from time to time. Capitalized terms are typically defined terms, and terms in this Community Operating Agreement have the meanings given in the Act to the extent they are not otherwise defined herein or in the Declaration, unless the context indicates otherwise. For purposes of the PSC this Community Operating Agreement shall be deemed part of the Declaration.

Part 1

Introduction and Overview

Although these covenants and this Community Operating Agreement are initially for the benefit of the Founder, the Community Operating Agreement is a tool used by the Founder to create the Founder's vision of the community. Cheshire's Town Center, situated in Cheshire Village, is a traditional neighborhood development proposed to contain residential, commercial, and civic spaces. When complete, Cheshire is designed to create a mixed-use community consisting of single and multifamily residential, office, retail, maker, civic, and common spaces and generally having the characteristics of a TND, as described on Exhibit C. While Cheshire Town Center is situated within the Town of Black Mountain, 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.



Under the terms of the Declaration, the Cheshire's Town Center Association (the "Association") maintains all of the Association common areas and elements, or "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. As provided by the Declaration, the Association provides maintenance and services appropriate to all of the spaces including maintaining the Neighborhood Commons, 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 zones may change from time to time as the use of a property changes. The Owners of all Lots within the 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. Generally, an Owner of a civic building or mixed-use building will be a member of the non-residential committee or subzone, but in some cases, if the residential portion of the building is owned as condominiums, the Owners of the Residential Units in a mixed-use building may be placed in residential committees or subzones.

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 this Cheshire's Town Center Community 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.

Authority to enforce, utilize and benefit from the easements, rights of approval and other rights reserved to Founder hereunder shall transfer to the Association on the date that construction is complete on all Lots in Cheshire's Town Center, or upon the Founder's voluntary assent ("Transfer of Authority").

	CHESHIRE'S TOWN CENTER ASSOCIATION
PURPOSE	Maintain and support the Neighborhood Commons, provide resources for Owners and help prevent or resolve conflicts between neighbors.
LEGAL STATUS	Nonprofit corporation
ENTITY	Cheshire's Town Center Association, Inc.
MEMBERS	All individuals or entities owning Residential, Commercial or Civic Lots within Cheshire's Town Center
PRIMARY SOURCE OF FUNDS	Assessments on Lots within Cheshire's Town Center secured by real property lien.



Architectural Review

The architectural standards for Cheshire's Town Center will be governed by the Cheshire's Town Center Design Standards as they may be amended from time to time. The Cheshire's Town Center Design Standards will help Cheshire's Town Center to develop in a manner that is consistent with the Founder's overall vision as that vision informs and is melded into the community's vision of itself.

Cheshire's Town Center is not, however, frozen in time. A neighborhood evolves after its initial construction. The questions surrounding modification review concern not just design but compatibility with adjacent properties.

This Part 2 provides a method for review of both initial construction and modifications.

2.1 Town Architect.

(a) Appointment of a Town Architect. Until the Transfer of Authority, the Founder may appoint a Town Architect, whose job it is to understand and interpret the Cheshire's Town Center Design Standards. The Town Architect must have a professional degree in architecture from an accredited university and must have experience or training in traditional neighborhood or town planning concepts or other qualifications deemed appropriate by the Founder. The Town Architect does not, however, need to be licensed to practice in North Carolina.

(b) Responsibilities of the Town Architect. If appointed, the Town Architect shall have the following responsibilities: (i) overseeing the Founder's architectural review programs to ensure compliance with the Cheshire's Town Center Design Standards; (ii) assisting Owners in complying with the Cheshire's Town Center Design Standards; (iii) assisting in the selection of appropriate materials for use in the Neighborhood Commons and public buildings; (iv) if authorized by the Cheshire's Town Center Design Committee (the "Design Committee"), reviewing plans for compliance with the Cheshire's Town Center Design Standards, initialing such plans, certifying that the plans were reviewed and noting any standards that have been waived; (v) if appointed to do so, serving on the Design Committee; and (vi) assisting the Association in the prosecution of any violations of the Declaration relating to the Cheshire's Town Center Design Standards.

2.2 Design Committee.

(a) Composition. The Design Committee has at least three members and no more than five members, with the number of members to be determined by the Founder, until Transfer of Authority. If the Founder fails to fill or maintain individuals in the positions on the Design Committee and fails to designate in writing the alternative mechanism for individuals to be named to the Design Committee, the

positions are to be filled using the procedure described in Section 2.10.

(b) Staff, Compensation. The Design Committee may employ personnel or contract with individuals or companies as necessary to assist in the review process. Professionals and staff may be paid reasonable compensation for serving on the Design Committee, as determined from time to time by the Founder or if the Founder no longer appoints the Design Committee, then the Board of the Association. All members shall be compensated for reasonable expenses.

(c) Review Fees. The Design Committee may from time to time set its review fees to cover all or part of the expected cost of its operation.

2.3 Design Standards. Until Transfer of Authority, other guidelines may be developed and approved by the Founder and made a part of the Cheshire's Town Center Design Standards. The Design Committee may revise any part of the Cheshire's Town Center Design Standards from time to time with prior approval of the Founder, until Transfer of Authority, (which approval may be withheld in the Founder's reasonable discretion), and thereafter at the Design Committee's discretion for any of the following reasons: (i) to correct errors or resolve conflicts with governmental requirements or make changes that the Design Committee believes will better accomplish the objectives of the Cheshire's Town Center; (ii) to permit use of new materials or techniques for construction or landscape that are appropriate to Cheshire's Town Center; or (iii) to recognize changing land use or market conditions over time, both from within and outside Cheshire's Town Center.

2.4 Construction Subject to Review.

(a) Applicability. Within Cheshire's Town Center, all plans and specifications for construction or modification of any structure or improvement of the real property (such as driveways, parking lots, fences, walls or walks or material landscaping element, such as trees or large shrubbery) must be reviewed and approved before construction in accordance with this Part 2. No construction or clearing of a Lot may begin nor permit therefor be issued or approved until the construction or clearing is approved by the Design Committee. Once construction begins, all construction must comply with the approved plans and specifications. Although this Part 2 refers to "Lots" and applies to private property, it also applies to modification of the Neighborhood Commons (other than initial construction by the Founder). Construction of any structure upon the Neighborhood Commons (other than initial construction by the Founder) or modification of any existing structure, as well as any material alteration of the landscaping or topography of any Neighborhood Commons, must be approved in advance by the Design Committee.

(b) Scope. Review for both new construction and for modification includes materials and color selection and selection and placement of any ornamentation or functional accessories, including the following:

- materials and color selection for the main building and any outbuilding

(including roof, doors, windows and trim);

- landscaping, grading and any removal or substantial pruning of trees or plants;
- privacy walls or other fences and gates, driveways, walks, patios and other ground surface materials;
- antennas, satellite dishes or receivers, solar panels or other devices which are visible from outside the Lot;
- fountains, swimming pools, whirlpools or other pools, awnings, flower boxes, shelves, statues or other outdoor ornamentation and window coverings visible through the window;
- signage of any type; and
- permanent or semi-permanent play equipment, whether or not secured, such as tree houses, pools, basketball hoops, skateboard ramps and swing sets.

The listing of a category does not imply that such construction or use is permitted. Review is not required in order to repaint with originally approved paint and colors, or to replace the roof or other components with duplicates of those originally approved in the same materials.

(c) Fixed Standards. The types of materials utilized in the construction of buildings, required setbacks, side yards, lot to building ratios, height restrictions, and the layout and width of individual street types must be as set forth in the Cheshire's Town Center Design Standards.

(d) Trees. The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated under the Cheshire's Town Center Design Standards. All plans must comply with applicable drainage, water conservation, erosion control and stormwater treatment requirements. Improper cutting, removal or intentional damage to existing trees is subject to fines plus a requirement that the tree be replaced with an approved species of comparable caliper, or, if approved by the Design Committee, a combination of trees totaling the caliper of the removed tree. Fines may be set by the Design Committee.

2.5 Standard for Review.

(a) Generally. Applications are approved based upon compliance with the Cheshire's Town Center Design Standards in effect at the time of the submittal, compatibility with surrounding Lots and Neighborhood Commons and overall quality of design. The Design Committee has the sole and absolute ability to review and approve applications. Strict compliance with the Cheshire's Town Center Design Standards does not guarantee approval of an application. The Design Committee may require changes to a plan to improve its aesthetic appearance even if the design meets the technical requirements of the Cheshire's Town Center Design Standards. If the Design Committee rejects an application due to overall design quality despite compliance with the Cheshire's Town Center Design Standards, the Design Committee shall make suggestions for improving the design.

(b) Waivers. The Design Committee may grant waivers from the Cheshire's Town Center Design Standards based on existing topographical or landscape conditions, existing trees, accessibility or architectural merit. Any such waiver must be in writing. Approval of a waiver does not constitute a precedent for other applications, and such requests may be arbitrarily denied.

2.6 Review Procedure.

(a) Applications. The Design Committee may establish forms and procedures for the review of applications, including review costs and fees, if any, to be paid in advance by the applicant. Any fee not paid in advance shall be the Owner's responsibility. The Design Committee may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(b) Notification; Construction; Inspection. The Design Committee shall use its best efforts to notify the applicant of its decision within the time allowed by its design approval process handbook. However, a delay in reviewing an application shall not be deemed consent to construction. If approval is given and all necessary governmental permits and approvals are in place, then construction of the improvements may begin. If construction is not begun within six months after approval of the plans and specifications and there has been any change in the Cheshire's Town Center Design Standards in the intervening months that would otherwise apply to the approved construction, then the approval will expire, and the plans and specifications must be resubmitted and a resubmittal fee paid according to the schedule of fees.

Notice to Owners: The contract for the construction or modification of a home or business is negotiated between the Parcel Owner and the contractor. Neither the Founder, nor the Design Committee, is a party to that contract. Owners are ultimately responsible for assuring that the improvements constructed on the Lot are in accordance with the approved plans and specifications. Because the Cheshire Village Center Design Standards may change from time to time, it is important that an Owner obtain or confirm that he or she has the current version of the Cheshire Village Center Design Standards before undertaking any change or improvement of the property. For the Owner's benefit, **contracts should require the contractor to build or modify the improvements in accordance with plans and specifications approved by the Design Committee.** Receipt of the Design Committee's Certificate of Completion and Release indicating compliance with the approved plans and specifications should be a condition of final payment on the contract.

(c) Inspection. The Design Committee or its agent may inspect the property during construction but has no obligation to make any such inspection.

(d) Governmental Compliance. Applicants are responsible for making sure that construction conforms to governmental regulations and all local building codes. If the Design Committee notes noncompliance, the applicant may be required to make the necessary changes. However, the Design Committee is not

responsible for compliance with governmental requirements.

(e) Completion. When the primary building and landscaping are completed in substantial compliance with the approved plans and specifications, Design committee shall issue a Certificate of Substantial Conformance. The Certificate shall describe any areas of deficiency that need to be corrected. All fines and other enforcement shall be waived so long as the deficiencies are corrected within sixty (60) days. Upon correction of all deficiencies, the Design Committee shall issue a Certificate of Completion and Release in recordable form.

2.7 Builders. The Design Committee may establish a review and approval process for builders and other contractors. Approval may be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to dispose of construction debris properly in accordance with project reuse and recycling programs and to build in accordance with the approved plans and specifications. Builders may be required to post a deposit for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in Cheshire's Town Center.

2.8 Liability. The Design Committee and its representatives are concerned primarily with aesthetic considerations and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the Design Committee of an application shall not constitute a basis for any liability of the Founder, or members of the Design Committee, Board or Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, failure to perform as expected or for the performance or quality of work of any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the real property.

2.9 Modification Committee to the Design Committee. The Design Committee may establish a committee to review and approve modifications of properties where the modifications are submitted at least two (2) years after a Certificate of Substantial Conformance, as described in Paragraph 2.6(f), has been issued.

2.10 Final Composition of the Design Committee. Within sixty (60) days after the Transfer of Authority, a new three or five-person Design Committee shall be appointed to replace the Founder-controlled Design Committee. The Association shall determine whether it will be a three or five-person Design Committee.

(a) Three-Person Design Committee. If the Association chooses to establish a three-person Design Committee, the residential committee or subzone and the non-residential committee or subzone shall each appoint one (1) member to the new Cheshire's Town Center. The two Design Committee members shall agree on the third member. Vacancies shall be filled in the same manner as the original appointments.

(b) Five-Person Design Committee. If the Association chooses to establish a five-person Design Committee, the residential committee or subzone and the non-residential committee or subzone shall each appoint two (2) members to the new Design Committee. The four Design Committee members shall agree on the fifth member. Vacancies shall be filled in the same manner as the original appointments.

All members shall serve two (2) year renewable terms.

2.11 Indemnification. Until the Transfer of Authority, the Founder shall indemnify any individual who is, was, or is threatened to be made, a party to a civil, criminal, administrative, investigative, or other proceeding (including a proceeding by or in the right of the Founder) because such individual is or was a member of the Design Committee, against all liabilities and reasonable expenses incurred by the Design Committee member on account of the proceeding, except such liabilities and expenses as are incurred because of the Design Committee member's willful misconduct or knowing violation of criminal law. Upon the Transfer of Authority, the Association, instead of the Founder, shall indemnify the Design Committee as set forth in this Section 2.11.



Environmental Protections

3.1 Environmental Manager. The Founder may establish the position of Environmental Manager, which may be a part-time or full-time employee of, or an independent contractor retained by the Founder or, at the Founder's option, the Cheshire's Town Center Association; provided, however, that after the Period of Founder Control ends, the Environmental Manager, if the position is established, shall be employed or retained only by the Cheshire's Town Center Association. The Environmental Manager, or the principals of the firm chosen as the Environmental Manager, shall have, at a minimum, a bachelor's degree in biology, botany, or a field related to forest or wildlife management and training in wildlife management, forestry management, stormwater management, and water quality control. The duties of the Environmental Manager may include one or more of the following:

(a) Design (in conjunction with the Design Committee) of a nature walkway system for Cheshire's Town Center;

(b) Development and oversight of a tree protection and maintenance program for Cheshire's Town Center;

(c) Maintenance of a tree inventory for Cheshire's Town Center;

(d) Oversight of a nursery program for Cheshire's Town Center;

(e) Oversight of erosion, sediment and stormwater control programs for Cheshire's Town Center;

(f) Development and oversight of an integrated pest management and pesticide and herbicide regulation program for Cheshire's Town Center to minimize synthetic chemical applications;

(g) Development and oversight of a fertilizer application program for Cheshire's Town Center to provide for appropriate treatment and to minimize fertilizer runoff;

(h) Advising Owners regarding implementation of stormwater best management practices;

(i) Development and oversight of a composting program for Cheshire's Town Center;

(j) Coordination of a recycling program for Cheshire's Town Center;

(k) Development and oversight of a wildlife habitat program for Cheshire's Town Center; and

(l) Development and oversight of a program for transplanting trees and relocating topsoil, as appropriate.

3.2 Implementation of Environmental Programs. As the Environmental Manager develops environmental programs for Cheshire's Town Center**,** the Association shall take appropriate steps to implement the programs. During the Period of Founder Control, if the Founder deems it necessary or desirable, the Founder may amend this Community Operating Agreement or any Supplemental Declaration in order to provide specifically for one or more environmental programs, including restrictions on the use of certain of the Neighborhood Commons.

3.3 Recycling. Without limiting the general requirement for all Owners to comply with all the environmental programs developed by the Environmental Manager, during the Period of Founder Control, all Owners and Occupants may be required to participate in a recycling program that shall provide, at a minimum, for the separation and removal from the general waste stream of glass, newspaper and aluminum cans. The costs of such program shall be paid by the Association. The Founder shall arrange for either drop-off or curb/alley pickup of such recyclables and shall take such steps as are necessary to arrange for the recycling of such materials. Yard wastes shall be prohibited in the general waste stream in Cheshire's Town Center and the Founder shall take such steps as are necessary for the recycling and composting of yard wastes. Such duties of the Founder may be delegated to the Cheshire's Town Center Association.

3.4 Dark Skies. Lighting within Cheshire's Town Center must be designed to reduce light pollution and promote and protect dark skies in the vicinity of Cheshire's Town Center while still maintaining a safe and well-lit community. All outdoor lighting within Cheshire's Town Center, except incandescent or fluorescent lights of one hundred fifty (150) watts or less (or the equivalent LEDs), must be shielded such that light rays emitted from the lamp or fixture (either directly from the lamp or indirectly from the fixture) are projected below a horizontal plane that runs through the lowest point on the fixture where the light is emitted.

3.5 Wildlife Habitat; No Hunting/Firearms. In addition to providing opportunities for passive recreation for residents and visitors to Cheshire's Town Center, portions of the Neighborhood Commons may be managed as wildlife habitat or used as a part of educational or recreational programs organized by the Founder or the Cheshire's Town Center Association. Such programs may be developed and supervised by a community activities director hired by the Founder or the Cheshire's Town Center Association. To protect these uses, hunting and firearms are strictly prohibited within the Neighborhood Commons. Swimming and wading are prohibited along the bank of, and in, the ponds and streams of Cheshire's Town Center.

3.6 Environmental Compliance. Each Owner and Occupant shall comply with all Laws relating to the discharge, storage and disposal of all hazardous or toxic wastes and substances, petroleum, petroleum by-products and other environmental contaminants (as any of the foregoing may now or in the future be defined by any Governmental Entity) on, at or from such Owner or Occupant's Lot or otherwise relating to environmental protection. All Owners and Occupants shall comply with all environmental provisions of the Cheshire's Town Center Design Standards and the Rules and Regulations.

3.7 Clean-up; Indemnification. By accepting a deed to a Lot, each Owner hereby agrees (i) to clean up and remove or contain (but only if permitted by law), in accordance with and to the extent required by any and all applicable federal, state and local laws, any hazardous or toxic substances or wastes or other environmental contaminants on or under the Owner's Lot, or stored, generated, disposed of or discharged by the Owner or any Occupant of the Owner's Lot or from the Owner's Parcel, and (ii) to indemnify, defend and hold harmless the Founder, any Affiliate of the Founder, the relevant Association, their agents and each of the other Owners from and against any and all foreseeable and unforeseeable claim, loss, damage, cost or expense (including, without limitation fines, clean-up costs, costs of relocating tenants, employees and agents, restoration costs, loss of income and attorneys' fees) incurred or suffered by the indemnified party as a result of any hazardous or toxic waste or substance or other environmental contaminant discharged from, stored at or disposed of at or from the indemnifying party's Lot.

3.8 Nuisance. Whether otherwise permitted by any governmental entity, the Reviewing Body (either the Founder or the relevant Association, as described in this Section) may prohibit any use or operation that creates objectionable noise, smoke, odors or which in any other way, in their reasonable opinion, will constitute a nuisance or degrade the value of Cheshire's Town Center. While the Founder owns any Lot in Cheshire's Town Center, the Founder shall be the Reviewing Body for purposes of this Section. Thereafter, the appropriate Association committee or subzone related to the Lot shall review nuisance issues.



Founder's Reserved Rights

4.1 Addition or Withdrawal of Real Property.

(a) Community. The Founder shall have the right, but not the obligation, for a period of twenty (20) years from the date of this Community Operating Agreement, from time to time in its sole discretion, to add to Cheshire's Town Center any part of the Community. This reserved development right may be exercised with respect to different portions of the Community at different times. No assurances are made as to the boundaries of those portions or order in which the portions will be added. Exercising any development right in any portion of the Community does not necessarily mean the right will be exercised in the remainder of the Community.

(b) Other Property. The Founder may also add to Cheshire's Town Center: (i) real property contiguous to the Community but not a part of the Community, (ii) real property any portion of which is within two miles 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, (iii) any other real property with a reasonable relationship to Cheshire's Town Center.

(c) Supplemental Declaration. A Supplemental Declaration adding the additional real property shall become effective upon being recorded in the office of the Buncombe County Register of Deeds, and upon such recording the additional real property shall become part of Cheshire's Town Center, subject to this Community Operating Agreement. The Supplemental Declaration may modify, remove or add to the provisions of this Community Operating Agreement if needed to reflect the different character of the additional real property, including a different assessment allocation.

(d) Withdrawal of Real 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 adequate legal and physical access to the remaining portions of Cheshire's Town Center are preserved.

4.2 Use of Name. The Founder reserves the right to trademark the name "Cheshire's Town Center" or other name of the Community as a trade name owned by the Founder. An Owner or Occupant may use the trademarked name to describe the location of its business and may advertise a business as being located in "Cheshire's Town Center" or other trademarked name for so long as it is actually located within Cheshire's Town Center. If required by the Founder, the Owner or Occupant shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. An Owner or Occupant may not use the trademarked name in any other manner

without the express permission of the Founder, which may be arbitrarily denied. The Founder shall have the right to change the name, Cheshire's Town Center, for all or any part of the real property subject to this Community Operating Agreement. The Founder may, but is not required to, amend this Community Operating Agreement to reflect the name change.

4.3 Reserved Easements. The Founder, its successors and assigns, is hereby granted all easements over, across, under and through Cheshire's Town Center reasonably necessary to permit the Founder to continue and complete construction of Cheshire's Town Center, whether or not that real property is ultimately submitted to this Community Operating Agreement, and all other properties owned by the Founder or its assigns which are adjacent to, or reasonably near, Cheshire's Town Center (including real property separated from Cheshire's Town Center by a public road), whether or not such properties are developed as part of Cheshire's Town Center. The exercise of this easement shall not unreasonably disturb the quiet enjoyment of the Owner's Parcel and, unless otherwise explicitly provided, any structure or landscaping disturbed in the exercise of this easement shall be restored to approximately its condition prior to exercise. Without limiting the generality of the foregoing, the Founder shall have for itself, and the right to grant to third parties, the following easements:

(a) Private Roads and Paths. A nonexclusive easement for use of any roads or streets within Cheshire's Town Center which are not accepted for dedication to the public and which are intended for automobile traffic (including rear lanes or alleys or other similar access roads that are generally intended for use only by residents on that road), along with a nonexclusive easement for appropriate use of any pedestrian or bicycle paths.

(b) Utility Easements. A blanket easement upon, across, over, though, 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 and services include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, natural gas, television, security, intranet, collection of garbage and recyclable materials, cable or communication lines and other equipment. By virtue of this easement, the Founder, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

(c) Cable, Broadband, and Fiber Optic Systems. Exclusive easements within all of Cheshire's Town Center for installation, replacement, repair and maintenance of cable, broadband, and fiber optic systems. By virtue of this easement the Founder, its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

(d) Police Powers. A blanket easement throughout Cheshire's Town Center for private patrol services and for police powers and services, including without limitation law enforcement, emergency rescue, and fire rescue, supplied by the local, state and federal governments. This easement allows police, rescue, and fire officials to clear private streets for

emergency vehicle access. The reservation of such easement does not imply that any such service shall be provided.

(e) Drainage, Erosion Controls. 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 or safety or to comply with governmental requirements. The entity that exercises this easement shall be responsible for notifying the affected Owners (except in an emergency) but shall not be obligated to restore landscaping or other improvements to the extent these are constructed in a right-of-way or required yard created by a setback. If, however, restoration is not precluded by the nature of the controls, the Founder shall reasonably restore the landscaping or other improvements. This easement may be exercised at the option of the Founder and shall not be construed to obligate the Founder to take any affirmative action to correct conditions.

(f) Encroachment. An easement for any improvements constructed on the Neighborhood Commons that encroach on any 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.

(g) Maintenance of the Neighborhood Commons. An easement for maintenance and improvement of the Neighborhood Commons at the Founder's discretion and, to the extent reasonably necessary, an easement over any Lot for maintenance of the Neighborhood Commons.

(h) Models; Neighborhood Information Centers; Sales and Management Offices. The right to maintain a sales office, a management office, a Neighborhood Information Center; and an unlimited number of models within Cheshire's Town Center. These facilities may be located on any Lot in Cheshire's Town Center with the permission of such Lot's Owner and may be relocated from time to time at the Founder's discretion. The sales office, management office, Neighborhood Information Center, and models may be owned by different entities, including builders and other entities that are unrelated to the Founder. At the end of its use as a sales or management office, Neighborhood Information Center, or model, the Lot shall be owned by the Owner of record, subject to all normal covenants and restrictions for Cheshire's Town Center. Subject to state law and local ordinances, the Founder or its assigns, where such right is specified, may maintain signs on the Neighborhood Commons and in the sales office, management office, Neighborhood Information Center, and models advertising Cheshire's Town Center.

(i) Construction Equipment. To the extent reasonably necessary, a easement over, under and through any roads, whether public or private, and any other area of the Neighborhood Commons for construction equipment, including wide construction vehicles, cranes and utility installation equipment, and any other purpose related to continued construction of any real property within the Community.

4.4 Commercial Use of Images.

(a) Cheshire's Town Center Images. The Founder shall have the following rights:

(i) The exclusive right to grant permission for the Neighborhood Commons to be photographed, sketched, painted or its image otherwise reproduced for commercial use (including without limitation its use as a motion picture set or as a background for the display of fashions or other goods); and

(ii) The right to grant permission for similar reproduction of the exteriors of any other part of the Lots which can be viewed from streets, alleys or the Neighborhood Commons. Such exteriors may be reproduced without the consent of, or payment to, the Owners of the Lot, but the above right is not intended to prevent any Owner or their architect from granting independent permission for any part of the Lots owned exclusively by that Owner, in which case the consent of the Founder shall not be required.

(*b) Fees*. The Founder may collect a fee for its consent to the use of such images or for the providing of support services to photographers or others. The exercise of this right to collect a fee shall not interfere with normal and customary rights of architects as to structures designed by them. Consent of the Founder shall not be required for photography or other reproductions of the images of the Lots in connection with any news or feature coverage, for academic purposes or by any governmental agency or entity appointed by a governmental agency for the purpose of promoting the region, the development of tourism or commerce or any other similar purpose.

4.5 Real Estate Offices. Until all real property has been transferred from the Founder to a party not related to the Founder, the Founder shall have the right to exclusive operations of real estate sales, rental or management offices within Cheshire's Town Center, which shall be considered a deed restriction for the entire Cheshire's Town Center and shall be part of the consideration for the sale of real property within Cheshire's Town Center. The Founder may grant permission for others to exercise the Founder's right at its sole discretion. However, home-based real estate offices without visible signs are permitted.

4.6 Assignment. The Founder may at any time assign all or any portion of its rights under this Community Operating Agreement to a related entity, a successor Founder, or the Association. The sale of a Lot to a new Owner does not constitute assignment of the Founder's reserved rights under this Community Operating Agreement with respect to that Lot.

4.7 Rules and Regulations. The Founder may enact Rules and Regulations governing any of the matters addressed by this Community Operating Agreement or the Declaration until such time as Rules and Regulations addressing similar matters are approved by the Association. Thereafter, so long as the Association has Rules and Regulations addressing the relevant provisions, the Founder shall not have the authority to enforce Rules and Regulations separately.

4.8 Parking. The Founder shall have the right to designate or assign parking lots, areas, and spaces within Neighborhood Commons for use by one or more Owners within Cheshire's Town Center. Unless the Founder has made such designation or assignment, all parking lots, areas, and spaces within the Neighborhood Commons shall be non-exclusive and may be used by any Owners or Occupants within Cheshire's Town Center, or the invitees or customers of such Owners or Occupants.

4.9 Special Declarant Rights. This section, as well as other sections of this Community Operating Agreement and the Declaration contain certain provisions that constitute Special Declarant Rights according to the PCA. All Special Declarant Rights, whether set forth in this Community Operating Agreement or in the Declaration shall end at the end of the Period of Founder Control except that the Special Declarant Rights set forth in Section 2 of this Community Operating Agreement shall end until the Transfer of Authority.



Amendment and Additional Terms

5.1 Amendment.

(a) Generally. Without limitation of any of Founder's Special Declarant Rights in this Community Operating Agreement or the Declaration, this Community Operating Agreement may be amended at any time by an instrument signed by the Founder and the president of the Association certifying approval by the Board. Rights reserved to the Founder may not be amended without the specific consent of the Founder and no easement on any Lot other than the Neighborhood Commons may be modified without the written approval of the Lot Owner. Any amendment shall take effect upon recording with the office of the Buncombe County Register of Deeds. The Founder must provide a copy of any amendment to Owners within thirty (30) days of the recording of such amendment.

(b) Founder's Right. To the extent permitted by law, the Founder specifically reserves the absolute and unconditional right to amend this Community Operating Agreement 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 Community Operating Agreement's provisions or correct errors, (iv) to subject additional real property to this Community Operating Agreement or in connection with Supplemental Declarations or to withdraw real property from Cheshire's Town Center, (v) to change a name pursuant to this Community Operating Agreement, or (vi) to conform to applicable law or the zoning requirements for The Town of Black Mountain.

(c) Recording. Any amendment shall take effect upon recording with the real property office of the Buncombe County Register of Deeds.

5.2 Rerecording. Unless this Community Operating Agreement is terminated, the Founder or any other party may rerecord this Community Operating Agreement or other notice of its terms at intervals necessary under North Carolina law to preserve its effect.

5.3 Enforcement.

(a) Deposit, Fines. The Founder may require the builder or Owner to post a deposit from which the Founder may deduct fines for failure to comply with the approved plans and specifications, tree regulations and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

(b) Unapproved Construction. If any clearing, grading, construction, demolition or modification is begun which has not been approved or which deviates from approved plans and specifications, the Founder may bring suit seeking damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. If the Founder brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Founder shall also be awarded reasonable attorney's fees, even if the relief requested is not granted.

(c) Other Enforcement. To enforce any other provision of this Community Operating Agreement, the Founder or if provided for in the Declaration, the Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity.

(d) No Waiver. Failure to enforce any provision of this Community Operating Agreement shall not be deemed a waiver of the right to do so at any time thereafter.

5.4 Interpretation.

(a) Construction. The provisions of this Community Operating Agreement shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Cheshire's Town Center as a neighborhood of the highest quality. Part 1 shall be considered in the nature of recitals.

(b) Exhibits. All Exhibits attached to this Community Operating Agreement are incorporated by reference and made a part of this Community Operating Agreement.

(c) Caption; Capitalized Terms; Gender; Graphics. The paragraph and section headings and captions appearing in this Community Operating Agreement 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 provision of this Community Operating Agreement. Terms that are capitalized in this Community Operating Agreement shall have the meaning set forth in the body hereof or below unless the context plainly makes such meaning inappropriate. Whenever the singular number is used in this Community Operating Agreement, 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. Whenever the term "including" occurs in this Community Operating Agreement, it shall be interpreted

broadly and without limitations as "including but not limited to". Graphics or renderings included as a part of this Community Operating Agreement have no regulatory purpose and do not represent a commitment to a particular outcome or result.

(d) Governmental Regulation. All provisions of this Community Operating Agreement shall be subject to applicable government regulation or agreements.

(e) Conflict. In the event of a conflict between this Agreement and the Declaration, the terms of this Community Operating Agreement shall govern, reflecting its prior recording.

(f) Invalidity. The invalidity of any part of this Community Operating Agreement shall not impair or affect the validity or enforceability of the rest of the Community Operating Agreement, which shall remain in full force and effect.

5.5 Jurisdiction. Any suit concerning this Community Operating Agreement must be brought in the court of appropriate jurisdiction for Buncombe County, North Carolina. This Community Operating Agreement shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned does hereby make this Community Operating Agreement and has caused this Community Operating Agreement to be executed effective 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

BY: _____

NAME: _____

TITLE: _____

_____

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

Exhibit A

Description of the Community

The Community shall include all of the real property in _____ identified on the drawing entitled "_____" prepared by _____, dated _____, attached hereto and incorporated herein by reference.

Exhibit B

Legal Description of Cheshire's Town Center

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

Exhibit C

Characteristics of a Traditional Neighborhood Development:
Design Purpose and Community Benefits

Cheshire's Town Center is a "TND" – a "traditional neighborhood development." That means that it has been specially designed to encourage pedestrianism – walking. Increasing pedestrianism has numerous benefits:

- Community interactions increase so that neighbors get to know one another;
- Vehicular traffic declines because people can go to parks, restaurants and churches without getting in their cars;
- Streets and parks become safer because of the number of people using them;
- Children and older citizens, who may not be able to drive, can safely walk; and
- Residents' health increases and obesity decreases.

Many of the traits that people seek out in a neighborhood – a feeling of community, a sense of place or safe conditions for their children – spring from this emphasis on pedestrianism and can only be collectively achieved through TND design.

In order to encourage people to walk, a number of conditions must be created. It must be safe to walk. There must be worthwhile destinations within walking distance, and the journey must be pleasant. Important elements of TND's, working in concert, create these conditions. The Founder must initially create these elements. It will be the community's responsibility to preserve them.

TNDs create safer streets in a number of ways. They use a network of smaller, connected streets rather than smaller streets feeding into bigger streets that feed into yet bigger streets that will be difficult for pedestrians to cross. Thus, it is important not to close off connections. TNDs use more narrow streets than conventional development with lower design speeds to force vehicles to slow down and also allow pedestrians to cross streets quickly. Cars parked along the sides of streets in TNDs also cause traffic to slow and reduce the visual impacts of having numerous parking lots. Pedestrians also feel safer with a barrier between them and traffic. Street trees provide a similar barrier, besides increasing the beauty of streets and providing comfortable shade. Alleys or lanes often provide the primary means of vehicular access to homes and businesses in TNDs. This means that there are fewer driveways and parking lot entrances for pedestrians to navigate. Houses and businesses in a TND typically are closer to the street, increasing safety by the many "eyes on the street." Similarly, parks and open spaces are normally surrounded by residences, providing 24-hour security.

When correctly designed, almost every residence in a TND is within a five-minute walk from some significant destination. Typically, TNDs have greater densities near their hubs in order to maximize the number of people who can easily reach the stores and restaurants or other destinations that often locate in these areas. These areas are supposed to be

vibrant and attractive, so they may have somewhat more light, a little more noise later into the evening and tighter parking conditions than other parts of the neighborhood. This is a cost of their being worthwhile destinations. Other communal destinations such as parks, amphitheaters, churches or schools have different neighborhood interactions. It is these destinations that give the community its character. Similarly, the parks and common areas of TNDs are usually open to the public, including people outside the TND. In this way a TND gives something back to the surrounding neighborhood. This also makes these destinations richer interactions in the larger community, beyond the edge of the TND.

Finally, the journey of the pedestrian must be pleasant and interesting. Sidewalks and trails often tie the TND together although sometimes streets are so small that no sidewalks are necessary. Along these paths, houses and shops pull up close to the street, providing interesting visual stimulus. Porches and stoops are encouraged in order to increase neighborly interactions. The typical TND creates a "building wall" along the street made up of the fronts of houses, shops and other buildings, and the community uses an architectural code to assure that the shared public area of the street is beautiful and interesting.

The benefits of pedestrianism are many. The design elements of TNDs that deliver those benefits can be accidentally destroyed through inattention. A through street is closed. The fire chief strips the parking off of a street. A parking lot is constructed up on a street. A park is closed to the public. The TND features and the design principles of Cheshire's Town Center must be protected through the years in order to continue to produce the desired benefits and it is the residents' responsibility to ensure this protection.

The vision for Cheshire's Town Center is grand and will take several years to achieve. However, the long-term success of the community depends on you and your involvement in this great community. Welcome to Cheshire's Town Center!