

**OPERATING AGREEMENT
OF
CHERRY TREE HILL COMMUNITY LLC**

Part I: Organization

1.1 - **Purposes.** Cherry Tree Hill Community LLC (referred to in this Agreement as "the Community") is organized for the following purposes: (i) to operate exclusively on a cooperative and nonprofit basis for the mutual benefit of its members; (ii) to facilitate the collectively self-managed efforts of its members to function in a participatory and non-exploitative manner; (iii) to create a sustainable economic entity providing justice and well-being to its members and enhancing its value to the next generation; and (iv) to conform its operations to responsible social and ecological values and to support and enhance its community.

1.2 - **Co-operative principles.** The Community shall be operated in accordance with the co-operative principles adopted by the 1995 General Assembly of the International Co-operative Alliance, such principles being: (i) voluntary and open membership without arbitrary discrimination; (ii) democratic governance; (iii) economic participation by members; (iv) autonomy and independence of the Community; (v) providing education and training; (vi) cooperation with other co-operatives; and (vii) concern for community.

1.3 - **Expense-sharing arrangement.** The Community shall at all times endeavor to maintain its status as a mere expense-sharing arrangement under Treas. Regs § 301.7701-1(a)(2). Any action that would render the Community ineligible for such status must be approved in advance at a meeting of associates, at which the proposed action is identified as affecting such eligibility.

Part II: Land use policies

2.1 - **Conservancy.** It shall be the policy of the Community to conserve its land for members and for future generations. The Community shall refrain from selling any of its land, and shall minimize the risk of loss of the land by avoiding mortgages or other encumbrances, except under the most compelling circumstances. No interest in the natural resources of the land shall be granted in any manner that does not maximize the continued use of the land and regeneration of its resources.

2.2 - **Land use planning.** If any significant new use of the Community's land is to be considered, it shall be the policy of the Community to prepare a land use plan that sets forth the natural characteristics of the land and

ecologically-sound plans for the use of, and improvement to, the land.

Part III: Membership

3.1 - Eligibility and admission. Membership in the Community shall be open to any individual who is in accord with the purpose and mission of the Community, has the temperament for cooperative social interaction, will meaningfully contribute to the common good of the Community, and is approved for admission. A person who becomes the spouse or partner of a member, and a child of a member upon reaching adulthood, shall upon request be admitted as a member unless the Community rejects the applicant for good cause shown. A person who acquires a capital interest in the Community does not thereby acquire membership. Each newly-admitted member shall affix her or his signature to this Agreement. The Co-op shall not discriminate against any person on account of race, national origin, age, gender, religion, sexual orientation, handicap or other arbitrary basis.

3.2 - Financial obligations. Each resident household shall contribute a fair share of needed capital funds upon admission to membership or in agreed installments, and subsequently as the need may arise, in such amounts and at such times as may be determined by the Community. As far as is practicable, contributed capital shall be equal among resident households or moving towards such equality.

3.3 - Ground lease agreements. The Community shall provide house sites to its members when practical based on availability, through proprietary ground lease agreements that endeavor to fairly balance the interests of the Community in ensuring the accomplishment of its purposes with the interests of members in ensuring their personal and household autonomy. Ground lease agreements are not required for membership.

3.4 - Rights of members. In addition to rights secured elsewhere in this Agreement with respect to participation in governance and patronage allocations and otherwise, each member shall have the rights guaranteed in the Universal Declaration of Human Rights of the United Nations, insofar as they relate to an alternative community. Members shall at all times have unfettered access to full information as to the operational and financial affairs of the Community.

3.5 - Settlement of disputes. In any dispute between the Community and any of its members or former members which cannot be resolved through informal negotiation, it shall be the policy of the Community to prefer the use of mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement. Neither party with a grievance against the other shall have

recourse to litigation until the matter is submitted to mediation and attempted to be resolved in good faith.

3.6 - Dissociation. A member may voluntarily dissociate upon not less than 90 days' advance written notice. A member may be expelled for cause by the Community, provided that he or she is given fair notice of the charges and an opportunity to respond in person or in writing. Upon dissociation without there being another adult member in the member-household, the member's capital interests shall normally be recouped by sale. Membership costs are not refundable or resellable.

3.7 - Access to information. Associates shall be provided adequate and timely information as to the organizational and financial affairs of the Community. Associates shall be provided access to the books and records of the Community for any proper purpose.

Part IV: Governance

4.1 - Collective self-management. The Community shall be collectively self-governed by members in a democratic and participatory manner. Every adult member of each member-household is expected to regularly and meaningfully participate in meetings of members. No member has the power to unilaterally act for the Community without express or implied sanction by the Community. No member may be represented at a meeting by proxy.

4.2 - Meetings. Meetings of members shall be held as often as may be necessary or appropriate but no less frequently than once a calendar quarter, or four times in a year. Meetings shall be called upon request of any two members.

4.3 - Notice. Meetings of members shall require advance notice to each active member within a reasonable time and in a reasonable manner. Notices must include a statement of purpose only as to any unusually significant matter expected to be considered at the meeting. Notice of any meeting may be waived by a member at any time before or after the meeting. Presence of a member at a meeting without having expressed objection to the notice shall be considered a waiver of any defective notice of that meeting.

4.4 - Quorum. At all meetings of members the presence in person of two-thirds of all active members shall be necessary and sufficient to constitute a quorum for the transaction of business. A member who is unavoidably absent from a meeting may be represented by another member only for the purpose of disclosing the views of the absent member on an agenda item.

4.5 - **Decision making.** Decisions shall be made by consent whereby differing points of view may be reconciled based on the purposes, policies, and best interests of the Community. If, in the opinion of a majority of participants, consent cannot be reached after diligent efforts have been expended and the matter is one of urgency, then the issue shall be resolved by a three-fourths vote of members present and participating. Members shall at all times have one and only one voice or vote without regard to the amount of their capital interests or the extent of their patronage.

4.6 - **Action by consent.** Decisions may be made without a meeting if a consent in writing, stating the action to be taken, is signed by all active members and filed with the minutes of meetings.

4.7 - **Suspension of participation rights.** A member's right to participate in governance may be suspended for cause for such time and with such conditions as is determined by the Community, provided that he or she is given fair notice of the charges and an opportunity to respond in person or in writing.

4.8 - **Standards of conduct.** Each member owes to the Community and to other members a fiduciary duty of loyalty and a duty to act with the care that an ordinary prudent person in a like position would exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the Community. Such duties shall be discharged in good faith and with fair dealing.

4.9 - **Conflicts of interest.** Active members shall be obligated to disclose any actual or potential conflicts of interest in any matter under consideration at a meeting. A member having such an interest may make a statement regarding the matter but may not be present during the discussion or decision of the matter unless otherwise determined for compelling reasons.

Part V: Periodic Financial Obligations

5.1 - **Common charges.** Common charges, consisting of estimated operating expenses of the Community, including reasonable cash requirements and reserves for contingencies, shall be assessed on member-households by the Community. Such estimates shall be derived from a budget, formal or informal, or from historical patterns of expenditures. Common charges may be increased or decreased from time to time for shortfalls or excesses in estimates of expenditures and cash requirements. Common charges may be reduced or eliminated for members in financial distress.

5.2 - **Capital assessments.** Capital assessments, consisting of the actual or prospective costs of structures and other improvements to common lands,

including reserves for improvements, may be assessed on member-households, provided notice of this item was previously provided to all members.

5.3 – Allocation and payment. Common charges and capital assessments shall be allocated equally upon each resident household or otherwise if they unequally benefit one or more resident households. Common charges shall be payable in advance in monthly or other periodic installments. Such fees and assessments may be reduced, delayed or waived in whole or in part if it is determined that a resident household is unable to pay them by reason of personal hardship or incapacity. Common charges are subject to increase or decrease for amounts owed by or owed to particular resident households. A resident household that otherwise fails to pay any such fees or assessment when due may be assessed a late charge for each period of delinquency or part thereof. Such late charge shall be added to the following month's common charges capital assessments.

Part VI: Capital Interests

6.1 - Capital accounts. The capital interests of members shall be evidenced in capital accounts. Each member shall have a single capital account. Capital interests shall include contributed capital, reserves for improvements, and retained patronage allocations, and shall be adjusted for any distributions. Capital interests do not include membership costs which are non-refundable. Capital interests shall be personal rights and not property rights. Rights to participate in governance of the Community proceed from membership, not from ownership of capital interest. Capital interests are entitled to no financial return on capital.

6.2 – Collective capital. Except as otherwise determined by the Community for compelling reasons, capital interests shall be permanent additions to the collective capital of the Community payable only upon its liquidation. When redeemed for compelling reasons, capital interests shall be redeemed as agreed to by the parties or otherwise as the Community is reasonably able to do so. They shall be redeemed at the lesser of their carrying value on the books of the Community or their net book value. Redemption proceeds shall at all times be subject to being offset by amounts otherwise due and payable by the member to the Community, including receivables arising from negative patronage allocations. No redemption shall be made that would render the Community unable to pay its debts in the ordinary course of its affairs.

6.3 - Transfer. Capital interests are ordinarily recouped only by sale or other transfer following notice of dissociation to a person or persons who are approved for admission to the Community. Upon notice of dissociation, the Community shall, supplemental to the efforts of the dissociating person or

persons, actively seek a desirable buyer. No transfer shall accord any more rights than those described herein. Members acknowledge and accept that these transfer restrictions may adversely affect the value at which their property may be sold.

Part VII: Allocation of net income

7.1 - **Patronage allocations.** The realized net income or loss, to the extent attributable to the patronage of members or non-member renters or directly related to the service activities of the Community, shall be equitably allocated among members in proportion to their common charges and other payments for services and at such time and in such a manner as to constitute patronage allocations in conformity with the common law of cooperative associations. Patronage allocations shall be credited to the capital accounts of recipient members and are thus subject to Part VII above.

7.2 - **Distributions for social purposes.** Any realized net income not includible in patronage allocations shall be distributed for local community support, co-operative development, or other social purposes within a reasonable time after receipt.

Part VIII: Fiscal and Miscellaneous Matters

8.1 - **Operating year.** The operating or fiscal year of the Community shall coincide with the calendar year.

8.2 - **Communication by electronic means.** Unless otherwise required by this Agreement, any notice, consent, or other document required or permitted by this Agreement may be delivered by electronic means.

8.3 - **Dissolution.** On dissolution of the Community, its assets shall be distributed in the following manner and order: (i) by paying or making provision for payment of all liabilities and expenses of liquidation; (ii) by redeeming contributed capital of an outside party; (iii) by redeeming contributed capital of members in excess of that required of, or paid in by, members generally; (iv) by redeeming other capital interests of members; (v) to the extent practicable without an appraisal or other expensive services, as to value of remaining assets attributable to land speculation and development activity, if any, by distributing it for local community support, co-operative development, or other social purposes; and (vi) by distributing any other remaining asset value to members in proportion to their years of residence in the Community and to former members in proportion to their years of residence in the Community during the preceding five years or as otherwise determined by the Community. If amounts described in (ii), (iii) or (iv) cannot be paid in full, they shall be paid on a *pro rata* basis among all such outstanding amounts within that category.

Part IX: Interpretation and Amendment

9.1 - **Interpretation.** Unless otherwise stated herein, all matters for decision or determination by the Community, either expressly or impliedly, shall be determined at meeting of members. A meeting of members may reasonably interpret this Agreement, apply it to particular circumstances, and adopt policies in furtherance of it.

9.2 - **Severability.** In the event that any provision of this Agreement is determined to be invalid or unenforceable under any statute or rule of law, then such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or rule of law without affecting the validity or enforceability of any other provision of this Agreement.

9.3 - **Amendment.** This Agreement may be amended or replaced only by consent of members and shall be evidenced by their signatures on an addendum to this Agreement or on a replacement agreement.

By signing this Agreement each member thereby agrees to all of the foregoing.

Dated: _____

Dated: _____

Dated: _____

Dated: _____

Dated: _____

Dated: _____