

This instrument was prepared by:  
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329 Cates Street  
Maryville, Tennessee 37801

RESTRICTIVE COVENANTS FOR TRILLIUM COMMERCIAL COVE  
SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by EARTHBOUND, L.P., a Tennessee Limited Partnership having as its General Partner, TRILLIUM COVE, INC., a Tennessee Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the Fifteenth (15<sup>th</sup>) Civil District of Blount County, Tennessee, which is more particularly described in Record Book Vol. \_\_\_\_ Page \_\_\_\_ in the Register's Office for Blount County, Tennessee, and

WHEREAS, the Declarant hereby declares that all the property described of record in Map File \_\_\_\_ in the Register's Office for Blount County, Tennessee, shall be held sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having all right, title and interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Trillium Commercial Cove Property Owners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more

persons or entities, of a fee simple title to any Unit which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property as shown in Map File \_\_\_\_ in the Register's Office for Blount County, Tennessee and such addition thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including improvements thereto) for the common use and enjoyment of the owners. The Common Area to be owned by the Association as shown in Map File \_\_\_\_ in the Register's Office for Blount County, Tennessee. Prior to the sale of any Unit, the Declarant shall convey said Common Area to the Association.

Section 5. "Unit" shall mean and refer to any plat of land or lot shown upon the recorded subdivision Map File of the properties with the exception of the Common Area. A Unit shall be considered one Unit for voting purposes.

Section 6. "Declarant" shall mean and refer to Earthbound, L.P., a Tennessee Limited Partnership, its successors and assigns.

Section 7. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for

the use of any recreational facility or waste disposal facility situated upon the Common Area:

(b) The right of the Association to suspend the voting rights and right to use of any recreation facilities by any owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Units shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A Membership on the happenings of the following event:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Unit owned within the Properties, hereby covenants and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges; (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Each Unit owner is also responsible for a pro-rata share of applicable septic system maintenance and improvements. However, no owner will be billed for septic system maintenance or improvements until a structure is built on his Unit.

The beginning commercial rate will be \$38.34 per month and may be raised if prescribed daily usage is increased. The sand filtration system is a public utility and

therefore as the utility's rates may increase so will that of the individual owner; however, if it is found that the restaurant units are the cause of the need for additional capacity, the restaurant owners are responsible for the entire cost for increasing the capacity of the sand filtration system.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners in the Properties and for the improvement and maintenance of the Common Area, which shall include, but shall not be limited to, parking, paving, roads, landscaping, lighting and walkways.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to any owner, the maximum annual assessment shall be \$ per month, per Unit.

(a) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special

assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meetings shall be held for more than 60 days following the preceding meeting.

Section 6. Uniform rate of Assessment. Special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable

charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of the Assessment on a Unit is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

Section 9. Subordination of the Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any preceding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V  
ARCHITECTURAL CONTROL

No building, fence, wall or other structures shall be commence, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing

as to harmony of the external design and location in relation to the surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have fully complied with. The architectural board shall have the power to force the upkeep and maintenance of the exterior of the units and shall have the power to fine the unit owner for non-compliance of any infraction set forth herein.

All landscaping must be in accordance with the architectural review board.

Beginning January 1, 2008, no "For Sale" signs shall be permitted advertising the sale of any Unit.

## ARTICLE VI PARTY WALLS

Section 1. Each Unit owner shall own to the Center of the common walls of each Unit. Each wall which is built as part of the original construction of the building upon the properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

Section 2. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of

the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice; subject however, to the right of any owner to call for a larger contribution from the others under any rule of law regarding liability from negligence or willful acts or omissions.

Section 4. Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

Section 5. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators.

Section 7. One Unit in each building shall have all of the electrical and telephone meter bases mounted on said Unit for all of the Units in that building.

#### ARTICLE VII ZONING REQUIREMENTS

This subdivision is zoned for a planned commercial development under the zoning ordinances under the City of Townsend. All of the requirement of the City of Townsend must be strictly adhered to unless changes have been first approved by the Board of Commissioners of the City of Townsend.

#### ARTICLE VII EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder as follows: maintenance of the walkways between Units. All other maintenance shall be the

responsibility of each Unit owner.

**ARTICLE IX**  
**GENERAL PROVISIONS**

Section 1. Easements. Each Unit is subject to the additional easements for the installation and maintenance of utilities and drainage facilities and for ingress and egress as shown on said recorded plat. Easements to each individual Unit for ingress and egress of adjacent property owners is reserved on the rear ten feet of each Unit.

Section 2. Temporary Structures No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any unit at any time as a residence, either temporarily or permanently, except during construction of the infrastructure or the individual units.

Section 3. Nuisance. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 4. Animals. No animals shall be kept or maintained in any Unit or thereabout.

Section 5. Rental of Unit. Any Unit owner who rents his or her unit to a lessee shall deliver to the Association a written copy of said lease together with a written covenant from the party or those parties in favor of the Association stating there will be full compliance with all the terms and provisions of this Declaration, the Articles and By-Laws and all rules and regulations adopted thereunder. In the event that such covenants are violated, the aforesaid owner shall cause the party or parties to vacate the Unit and, in the event such party or parties do not vacate the Unit, the Association shall take whatever measures are necessary to have the party or parties removed from the Unit and shall assess the owner for any costs or attorneys' fees caused by such measures. No lease term on any

Unit shall be for a period of less than six (6) months.

Section 6. Vehicles. Except as the Board of Directors may otherwise provide, no trucks, commercial vehicles, recreation vehicles, motor homes, motorcycles, campers, boats, or boat trailers may be parked in any driveway or upon any Association Property. No repair work to any type of motor vehicle shall be conducted on an Association Property or any Unit other than very minor repairs. Notwithstanding the foregoing, a moped or Motorized bicycles may be kept in a structure provided that the same is not visible to the public. Notwithstanding any other provision of this section, vehicles used in trades or customers of Units or their tenants shall be permitted upon the Common Areas as allowed by the Board of Directors.

Section 7. Exterior Surfaces. No awnings, shades, or other items shall be attached to, or hung or used on the exterior or any window or door of a structure or on the exterior of any building without the approval of the Architectural Committee. All masonry block must be covered with natural stone. Exterior wooden siding must be rabbeted beveled western cedar, rabbeted beveled cypress, rabbeted beveled redwood or log siding. All windows must be Pella (Clad exterior). All exterior doors must be wooden. All shingles must be approved by the Architectural Review Committee. All masonry block foundation must be covered in natural stone. Exterior coverings of the buildings may consist of a first floor made of masonry block covered in natural stone and gable ends and covered in wooden siding or the first floor made of wood frame construction and gable ends covered with wooden siding. All soffits and porches must be covered with eight (8) inch pine or spruce tongue and groove. All chimneys must be constructed of masonry block and veneered with natural stone. No wooden chimneys will be allowed.

Section 8. Unless installed by Declarant, no owner shall install any electrical or

telephone wire, television antenna, satellite, air conditioning unit, or other machine anywhere on any structure for any Unit in such a fashion that it is visible anywhere outside such structure without express consent of the Architectural Committee. Air conditioning units may be placed upon the common elements adjacent to a Unit, if approved by the Architectural Review Committee. All liquid propane tanks may be located in the common area but must be buried.

Section 9. No flammable, combustible or explosive fluid or chemical substance shall be kept in any structure except such as such are required for normal commercial use. No Owner shall permit or suffer anything to be done or kept in his or any structure which will increase the rate of insurance as to other Unit Owners or as to their Units or as to the Association as to the common property.

Section 10. The sidewalks, entrances, passages, stairways, and all areas must not be obstructed or encumbered or used for any purpose other than ingress and egress to to and from the premises and parking.

Section 11. Signs. Only one (1) commercial road sign to be supplied by the Declarant shall be allowed on the properties. Only one (1) 3' X 3' sandblasted building sign and one (1) 2' X 18" sandblasted sign shall be placed upon any Unit and all signs must be approved by the Architectural Review Committee.

Section 12. Construction All construction started after May 1, 2005 must be completed within four (4) months accompanied by a certificate of occupancy. If not completed within four (4) months, there will be a \$50.00 fine per day assessed against the Unit owner until the Unit is completed.

Unit owner shall be assessed a \$750.00 impact fee to the Homeowner's Association for all construction beginning after May 1, 2005 2

Any infrastructure damaged during another Unit's construction shall be the responsibility of the Unit owner constructing the new Unit.

No land outside of the footprint of the Unit shall be disturbed unless otherwise stated herein.

Any debris from a destroyed building shall be removed by the Unit owner within thirty (30) days.

The restrictions set forth herein shall apply to all contractors with the exception of Plumb Level Construction, Inc.

The number of parking places designated to each Unit by the Townsend Planning Commission may be used as a ramp area for building materials during construction. Said area must not obstruct any other Unit's space and must be controlled to keep other Units safe and the owner of said Unit, during construction, shall be responsible for ensuring the safety of other Units

Section 13. Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 14. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

Section 15. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from date this Declaration is

recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than eighty (80%) percent of the Unit Owners, and thereafter by an instrument by not less than seventy-five (75%) percent of the Unit Owners.

Any amendment must be recorded.

Section 16. On the premises there shall not be allowed more than two (2) eating establishments (of 16 seats maximum per establishment) one title company, one real estate office other than Townsend Realty, and a total of six professional establishments allowed on the Properties at any given time.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has set its hand by its duly authorized officer on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

EARTHBOUND L.P., a Tennessee Limited Partnership  
BY TRILLIUM COVE, INC., its general partner

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

ITS: \_\_\_\_\_  
PRESIDENT

STATE OF TENNESSEE )  
COUNTY OF BLOUNT )

Before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be President of Trillium Cove, Inc., the General Partner of EARTHBOUND L.P., a Tennessee General Partnership, and that he as such President of the General Partner, being authorized so to do, executed the within instrument for the purposes therein contained by signing as President of the General Partner.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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

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

HP Color LaserJet

# Fax Confirmation Report

HP LASERJET FAX

May-4-2010 10:48AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
35	5/ 4/2010	10:43:33AM	Receive		5:15	16	OK

To: DEREK  
Re: TRILLIUM CODE