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DECLARATION OF COVENTANTS CONDITIONS AND RESTRICTIONS

ESTABLISHING A PLANNED UNIT DEVELOPMENT WITH PRIVATE ELEMENTS

KIRKWOOD GLEN

THIS DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS is made this _____ day of September, 2005, by STEVEN H. REZBA, (herein called "Developer"), for himself, his successors or assigns, wherein the Developer makes the follow declarations and submissions.

* to master Deed 20050923-0114369

1. **PURPOSE**. The purpose of this Declaration of Covenants Conditions and Restrictions is to submit the land described in **Exhibit "A"** attached* and made a part hereof (sometimes referred to herein as the "Property", or Kirkwood Glen), and the improvements thereon to a Horizontal Property Regime, as a planned unit development with private elements, under the provisions of the Tennessee Horizontal Property Act, as codified as §66-27-101, et seq., of the Tennessee Code Annotated.

2. **NAME AND ADDRESS.** The name by which this horizontal property regime is to be identified is Kirkwood Glen, and it is located in Nashville, Davidson County, Tennessee, at 804-810 Knox Avenue and 848, 850, 854 and 856 Kirkwood Avenue.

3. **SUBMISSION OF THE PROPERTY.** The Developer hereby submits the Property, together with the buildings and improvements thereon, owned by the Developer in fee simple absolute, to the referenced provisions of the Tennessee Code Annotated, hereby establishing a planned unit development with private elements, which Property is shown on a **Plat attached as Exhibit "B".**

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4. **LAND INCLUDED IN PROPERTY.** The land included in the property consists of the **land described in Exhibit "A"*** , which is made a part hereof by reference. Said land will be sometimes referred to as the "Property" or Kirkwood Glen. The fee simple absolute title in such land is hereby vested in the horizontal property regime hereby established.

* See master Deed

5. **THE BUILDINGS.** Kirkwood Glen consists of **nine (9) buildings** comprised of **eighteen (18) units**.

6. **UNITS.** The legal description of each unit consists of the identifying number or symbol of such unit as shown on the Plat. "Unit" shall have the same meaning as that described as an "Apartment" in Tennessee Code Annotated 66-27-102 (a) (1). Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a unit by its identifying number or symbol as shown on the Plat and every such description shall be deemed good and sufficient

for all purposes, as provided in the Act. Except as provided by the Act, no unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his unit to be separated into any tracts or parcels different from the whole unit as shown on the Plat.

7. **DIMENSIONS OF UNITS.** Each unit consists of the area measured horizontally from the unit side of the unfinished dry-wall or paneling of the walls facing the exterior of the building to the unit side of the dry-wall or paneling of the wall and partition separating such unit from corridors, stairs, incinerators and other mechanical equipment space (if any) and, where walls and partitions separate such unit from other units, to the side of the unfinished dry-wall or paneling of such walls and partitions facing such unit; where dry-wall or paneling separates one room in a unit from another such room, from one side of each room wall to the other side of such room's opposite wall. Vertically, each unit consists of the space between its unfinished floor and its unfinished ceiling.

8. **USE OF UNIT.** Each of the units shall be used as a single family residence only, except that Developer may use any unit owned by Developer as a model for the purposes of marketing unsold units. **No more than four (4) units may be leased to non owner occupants at one time. Approval must be obtained from the Board of Directors before any unit can be leased to a non owner occupant as set forth in Article II Section 2 of the By-Laws (Exhibit "C").**

9. **COMMON ELEMENTS.** The common elements consist of the entire property, as shown on the plan which is an exhibit to the Declaration of Covenants Conditions and Restrictions, including all parts of the building other than the units and including, without limitation, the following:

(a) The land, except that part of the land which is a Private Element as described herein and as set forth in Tennessee Code Annotated 66-27-102 (a)(1)(B)(12).

(b) All foundations, columns, girders, beams and supports.

(c) All roofs; all exterior walls of the building not including the portions thereof on the unit side of the dry-wall or paneling of such walls; and the portions between the unit side of walls and partitions between units; all floors and ceilings. No co-owner shall be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his unit, nor shall such co-owner be deemed to own the utilities (without limitation) running through his unit which are utilized for, or serve more than one unit, except as a right in common to share the same with the other co-owners. A co-owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows, and doors bounding his units.

(d) All storage spaces not restricted to use by particular units.

(e) All tanks, pumps, motors, fans, compressors, air handling units and control equipment, and any system for central services; but not including heating or air-conditioning units, equipment or components thereof which serve only one unit.

(f) All sewer pipes (excluding pipes defined as Limited common elements).

(g) The interest of each co-owner in the common elements and as used in defining that owner's interest in the townhouse corporation is one-eighteenth ($1/18^{th}$)..

(h) Developer, Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall have the right, until all units are sold by Developer or until Developer ceases to manage the condominium, whichever shall last occur, to access, ingress to and egress from the Building and Property as may be required for construction and maintenance and for the purpose of sale of units, and to show one or more of such unsold or unoccupied units as a model and may use one or more of such unsold or unoccupied units as a sales office and may maintain customary signs in connection therewith.

11. **PRIVATE ELEMENTS.** A private element shall mean and include the lot area upon which a unit, or apartment (as that term is used in the Horizontal Property Act), is located and the improvements located thereon, as described in this declaration, and for which fee simple ownership and exclusive use is reserved to the owner of that unit only.

12. **LIMITED COMMON ELEMENTS.** Limited common elements are defined as those common elements which are reserved for the use of a certain unit or units to the exclusion of the other units:

(a) All patios, porches, decks, storage spaces, stoops, which serve individual units are limited common elements for the exclusive use of the owner(s) whose unit they serve.

(b) All yard areas, walks and drives designated for use by a particular unit as shown on the Plat which is Exhibit "B"* are limited common elements for the exclusive use of the owner(s) whose unit they serve.

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(c) All utility pipes, i.e., plumbing inside walls of a building which serve one unit only, are limited common elements.

(d) Party walls (if any) between units shall be limited common elements.

(e) All heating or air-conditioning units, equipment or components thereof which serve only one unit but are located outside that unit, shall be limited common elements exclusively for that unit.

13. **INDIVISIBILITY OF INTEREST.** The common elements, both general and limited shall remain undivided, and shall not be subject to any action for partition or division of co-ownership.

14. **ENCROACHMENTS.** If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of a building or any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of a building, or any building, a valid easement for the encroachment and for the maintenance of the same so long as such building stands, shall exit. In the event such building, a unit, any adjoining unit, or any adjoining common element, shall be partially or totally destroyed as a result of fire or other

casualty or as a result of condemnation or eminent domain proceedings, and then rebuild, encroachments of parts of the common elements upon any unit or of any unit upon any other unit or upon any potion of the common elements, due to such rebuilding, shall be permitted and valid easements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as any such building shall stand.

15. **PIPES, DUCTS, CABLES, WIRES, CONDUITS, PUBLIC UTILITY LINES AND OTHER COMMON ELEMENTS LOCATED INSIDE OF UNITS.** Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables (television, communication or otherwise), wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Board of Managers, or its designated representative, shall have a right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common elements contained therein or elsewhere in any building.

16. **UNITS SUBJECT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS.** All present and future co-owners and tenants of units shall be subject to and shall comply with the provisions of this Declaration of Covenants Conditions and Restrictions and any restrictions or rules in the By-Laws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Developer shall be incorporated and become a part of this Declaration of Covenants Conditions and Restrictions by reference. The acceptance of a deed of conveyance, devise, inheritance or the entering into a lease of a unit or entering into occupancy of a unit, shall constitute an agreement that the provisions of this Declaration of Covenants Conditions and Restrictions and such By-Laws provisions are accepted and ratified by each co-owner and tenant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated in full in each and every deed or lease thereof.

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17. **UNITS SUBJECT TO BY-LAWS.** All present and future co-owners, tenants and occupants of a unit shall be subject to, and shall comply with, the provisions of the By-Laws of record as **Exhibit "C"** *, pursuant to Tennessee Code Annotated,§66-27-101, et seq., as they may be amended form time to time. The acceptance of a deed of conveyance, devise or of a lease to a unit, or the entering into occupancy of any unit shall constitute an agreement that the provisions of the said By-Laws, as they may be amended from time to time, are accepted and ratified by such co-owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease, thereof.

18. **AMENDMENT.** This Declaration of Covenants Conditions and Restrictions may be amended by a deed of amendment joined in by co-owners representing at least sixty-seven (67%) percent of the total units in the horizontal property regime, which deed shall be recorded in the Register's Office for Davidson County, Tennessee. For these purposes, Developer shall be deemed to be the owner of all units which have not been actually deeded to a purchaser, regardless of whether such have actually been begun or constructed.

19. **WAIVER.** No provision contained in this Declaration of Covenants Conditions and Restrictions shall be deemed to have been abrogated or waived by reason of any failure to enforce it, regardless of the number of violations or breaches which may occur.

20. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference and neither define, limit, or describe the scope of this Declaration of Covenants Conditions and Restrictions nor the intent of any provision hereof.

21. **GENDER.** The use of the masculine gender in this Declaration of Covenants Conditions and Restrictions shall be deemed to refer to the feminine gender and the singular shall be deemed to refer to the plural and visa versa, whenever the context so requires.

22. **DEFINITION OF TERMS.** The words and phrases used in this Declaration of Covenants Conditions and Restrictions shall have such meanings as are ascribed to them in general English language usage as related to the context in which they are used; provided, however, that those words and phrases which are defined in the Tennessee Horizontal Property Act shall have the meanings there given, and provided further that words and phrases not directly defined in the Act, but whose definition would be indirectly indicated, shall have the meanings which would be necessary to maintain this Declaration of Covenants Conditions and Restrictions in compliance with the said Horizontal Property Act.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants Conditions and Restrictions at Nashville, Davidson County, Tennessee, on this 16th day of September, 2005.

STEVEN H. REZBA, Developer

State of Tennessee
County of Davidson

On September 16th, 2005, before me the undersigned authority, personally appeared STEVEN H. REZBA to me known (or proved to me on the basis of satisfactory evidence) to be the person(s) described in and who executed the foregoing instrument, and acknowledged the execution as a free act and deed.

Notary Public

My Commission Expires:

CHRISTY W. IVEY NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENN.

My Commission Expires JULY 21, 2007