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DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING THE HAMILTON CROSSINGS TOWNHOMES A PLANNED UNIT DEVELOPMENT

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING HAMILTON CROSSINGS TOWNHOMES

This Declaration of Covenants, Conditions and Restrictions, (the Declarations) made as of the 17th day of Feb., 2004 by J. D. Eatherly, hereinafter collectively referred to as "Declarant", for himself, his heirs, successors, grantees, beneficiaries and assigns.

W I T N E S S E T H:

1. SUBMISSION TO PLANNED UNIT DEVELOPMENT OWNERSHIP.

(a) The purpose of this Declaration is to submit the land hereinafter described in Exhibit A, and the improvements constructed thereon, to the planned unit development form of ownership and use, in the manner provided under the provisions of the Tennessee Code Annotated. Title 66, Chapter 27, Section 101, et seq., as amended, known as "The Horizontal Property Act".

(b) The name by which this planned unit development is to be identified is "Hamilton Crossings Townhomes", hereinafter called the "PUD".

(c) The address of the planned unit development is 1301 Hamilton Church Rd Nashville, Tennessee 37013.

(d) The land, which is hereby submitted to this condominium form of ownership, is fully described in Exhibit A hereto, which, by reference, is made a part hereof as fully as if copied herein. The improvements located on such land include, but are not limited to an initial plan for forty eight (48) lots in Phase One, hereinafter referred to as the Lots, and improvements constructed on the Lots. It is anticipated that two additional phases will be developed and the total number of Lots will be 168. The drawings showing the Lots will be collectively referred to as the Plats.

(e) The description and identification of the Units are shown on the Plan of the Hamilton Crossings Townhomes of Phase One, hereinafter referred to as the "Plat", which Plat is attached hereto as Exhibit A-2 and which is further incorporated by reference herein.

2. DEFINITIONS.

The terms used herein and in the By-Laws, which are attached hereto as Exhibit B, shall have the meanings stated in the Horizontal Property Act, as follows:

(a) Assessment means a share of the funds required for the payment of expenses and charges which from time to time may be assessed against each Unit owner with respect to each Unit.

(b) Association means Hamilton Crossings Townhomes Owner Association, Inc., a Tennessee corporation, not for profit, being the entity responsible for the operation of the planned unit development and its successors. Copies of the By-Laws and Charter of the Association are attached hereto, and made a part hereof as Exhibit B and C, respectively.

(c) Board of Directors means the Board of Directors of the Hamilton Crossings Townhomes Owner Association, Inc.

(d) Building means the permanent structure to be constructed on each Lot.

(e) Common Elements - all portions of the Land and all improvements located thereon except for the Lots, the Units and the Limited Common Elements as defined here and except or is specifically provided herein.

(f) Common Expenses means the following:

(1) Expenses of administration of the planned unit development;

(2) Expenses of maintenance, operation, repair. or replacement of the Common Elements and Limited Common Elements;

(3) Expense of Utility Services:

(4) Expenses declared Common Expenses by provisions of this Declaration or by the By-Laws; and

(5) Any valid charge against the planned unit development as a whole.

(g) Declarant means J. D. Eatherly, his heirs, successors, beneficiaries and assigns, provided such successors and assigns are designated in writing by Declarant as a successor or assignee of the rights of Declarant set forth herein, or to the rights of the venturers comprising the Declarant.

(h) Limited Common Elements means a portion of the Common Elements allocated by this Master Deed for the exclusive use of one or more but fewer than all the Units. They may also herein be refereed to as Private Elements

(i) Land means the improved real property described on Exhibit A to this Master Deed.

(j) Lot means one of 168 tracts or parcels of land shown on the Phase One Plat attached as Exhibit A-2 to this Declaration and on Phase Two and Phase Three Plats to be attached in the future. The projected Phase Two and Phase Three Development will be on a portion of the Land described in Exhibit A.

(k) Members shall include all Lot owners of record.

(l) Lot Owner means the person or persons holding title in fee simple to a Unit

(m) PUD - Planned Unit Development means this Planned Unit Development which has been created pursuant to 66-27-101 et. seq.

(n) Utility Services shall include, but not be limited to, water, sewer, garbage collection, and electricity required to operate the lights and other elements deemed to be Common Elements by this Declaration, and other utility services provided the Planned Unit Development as a whole.

(o) Units describe the Building to be constructed on an individual lot.

3. OWNERSHIP OF COMMON ELEMENTS AND COMMON EXPENSE LIABILITY.

(a) Each Lot owner shall own a share in the Common Elements, and shall be

liable for payment of the percentage of Common Expenses equal to the percentage of the undivided interest in the Common Elements appertaining to each Unit as set forth in Exhibit A-1 attached hereto and by reference incorporated herein; provided, however that the Common Expenses incurred with respect to a Limited Common Elements shall be paid by the owners of the Unit or Units to which such Limited Common Element was assigned at the time the expense was incurred as provided in Paragraph 7 of this Declaration.

(b) Any conveyance of an individual Lot shall be deemed to also convey the undivided interest of the Lot Owner in the Common Elements and Limited Common Elements appertaining to such Lot even if such conveyance does not specifically refer to such undivided interest.

4. MAINTENANCE AND ALTERATION OF LOTS.

(a) The maintenance and repair of the Lot shall be the responsibility and expense of the Lot Owner.

5. Private Elements

Section 1: Private Elements Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby covenant that the Private Elements described herein shall be as if included on the Plans, and such Private Elements are subjected to the Act and this Master Deed as Private Elements. The term Private Elements includes the Lot and the Building constructed thereon.

Section 2: Boundaries of Each Private Element. The boundaries of each unit are shown and depicted on the Plat referenced above. However, notwithstanding the depiction on the Plat of the boundaries of any unit, each unit shall have a private element which shall be described as follows:

(a) The centerline of any firewall separating any Townhomes form an adjoining Townhomes shall constitute a portion of the side boundary lines of the two Private Elements containing such Townhomes.

(b) The outer, exterior surface of the sidewall of any Townhomes that does not separate such Townhomes from an adjoining Townhomes shall constitute a portion of the side boundary line of the Private Element containing such Townhomes.

(c) The portions of each of the side boundary lines of each Private Element which are described in paragraphs (a) and (b) hereof shall be extended in straight lines to that point which is located ten (10) feet from the outer, exterior surface of the rear wall of the Townhomes located on the such Private Element. Such extensions of such side boundary lines shall constitute part of the side boundary lines of such Private Element.

(d) The rear boundary line of each Private Easement shall be a straight line which connects the two extended points which are identified in paragraph (c) hereof.

(e) The portions of each of the side boundary lines of each Private Element which are described in paragraphs (a) and (b) hereof shall be extended in straight lines to (a) the curb of the private street on which such Private Element is located, in the case of a Private Element which does not have a sidewalk located in front of it, and (b) the edge of the sidewalk, in the case of a Private Element which does have a sidewalk located in front of it. (The entirety of such sidewalk shall constitute part of the Common Area). Such extensions of such side boundary lines shall constitute part of the side boundary lines of such Private Element.

(f) In the case of a Private Element which does not have a sidewalk located in front of it, the edge of the curb of the private street on which such Private Element is located shall constitute the front boundary line of such Private Element. In the case of a Private Element which does have a sidewalk located in front of it, the edge of the sidewalk shall constitute the front boundary line of such Private Element.

Section 3: All Private Elements Bear the Burdens and Enjoy the Benefits of this Declaration. Every person who is a record owner of a fee or undivided fee interest in any Private Element does, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Private Element, agree to all the terms and provisions of this Declaration. Each of the Private Elements agree to all of the terms and provisions of this Declaration. Each of the Private Elements is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 4: Easements Over the Private Elements. The Private Elements shall be subjected to, and the Declarant does hereby grant to

the approximate grantees thereof, the following easements.

(a) Each Private Element shall be subject to all easements which are shown and Depicted on the Plat as affecting and burdening such Private Element.

(b) Each Private Element shall be subject to an easement for slope control purposes, including the right to grade and plan slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and

(c) Each Private Element, including the Townhomes located thereon, shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go in such Townhomes and upon such Private Element under circumstances, and for the purposes described in Article IX of this Declaration.

(d) It is the purpose of this Declaration to permit the Fire Department of the Metropolitan Government of Nashville and Davidson County, Tennessee, to have access to each of the single-family units in the Planned Unit Development from a paved access road.

6. MAINTENANCE AND ALTERATION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

(a) The maintenance, operation and repair or the common Elements shall be the responsibility and the expense of the Association.

(b) The maintenance, operation and repair of the Limited Common Elements shall be the responsibility of the Association, and shall be a Common Expense initially paid for by the Association but assessed back against the Lot Owners as provided for in Paragraph 7 of this Master Deed, except as follows:

(c) There shall be no alteration or further improvement of the Common Elements without prior approval in writing by the Board of Directors. The shares of any cost of such alteration or improvement shall be assessed to the Lot Owners in accordance with their interest in the Common Elements There shall be no change in the shares and rights of a Lot Owner in the Common Elements which are altered or further improved.

(d) The Declarant shall not need the approval of any owner or any other party to make changes and/or alterations to the Common Elements or Limited Common Elements until such time as it has sold all one hundred sixty eight (168) Lots in the Planned Unit Development.

7. ASSESSMENTS.

(a) Assessments against Lot Owners for Common Expenses shall be made pursuant to the By-Laws and shall be allocated as set forth in Paragraph 3 of this Declaration. Any common expense associated with the maintenance, repair, or replacement of a Limited Common Element, however, shall be assessed in equal shares against the Lots to which that Limited Common Element was assigned at the time the expense was incurred, except as otherwise provided in Paragraph 5 of this Declaration.

(b) Assessments, and installments thereon, paid on or before fifteen days after the date when due shall not bear interest, but all sums not paid on or before fifteen days after the date when due shall bear interest at the rate of fifteen percent per annum or at such other rate of interest determined by the Association not to exceed the maximum rate allowed under applicable laws and shall be subject to a $15.00 late charge or such other late charge amount as may be adopted by the Association. All payments upon account shall be first applied to late charges, then interest and then to the assessment payment first due.

(c) The Association shall have a lien for unpaid assessments as provided by the Horizontal Property Regime Act and this Declaration. Such lien shall also secure reasonable attorney's fees and all costs of collection incurred by the Association incident to the collection of such assessment or enforcement of such lien.

(d) In any foreclosure of a lien for assessments, the Lot Owner of the Lot subject to the lien shall be required to pay a reasonable rental for the Lot after foreclosure proceedings are commenced, and the Association shall be entitled to the appointment of a receiver to collect such rental.

(e) The Lot Owner and his/her grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance, but without prejudice to the rights of the grantees to recover from the grantor the amounts paid by the grantee for delinquent assessments. Such liability may not be avoided by a waiver of the use of any Common Element or by the abandonment of the Lot. The Association shall have the right to sue for and collect any such unpaid as assessments, to foreclose upon the lien securing the assessments or to institute any other competent proceeding. In any event, the Association shall be entitled to recover all delinquent payments, together with late charges, interest, and all costs of collection, including reasonable attorneys' fees.

(f) A purchaser of a Lot at a foreclosure sale upon a first deed of trust shall be

liable only for assessments coming due after such sale and for the portion of due assessments prorated for the period after the date of such sale.

7. In no event shall the Declarant pay, or be responsible for, the payment of assessments until the one hundred sixty eight (168) existing Lots have been sold and title has been conveyed to purchasers by the Declarant. However, the Declarant reserves the right to contribute to the Association such funds as may be required to maintain the Common Elements and Limited Common Elements, to the extent that the assessments paid by other Lot Owners are insufficient to pay the cost thereof.

8. POWER OF SALE TO ENFORCE ASSESSMENT LIEN.

(a) For and in consideration of the privileges, protections, mutual enjoyment and use of the Common Elements and the Limited Common Elements, the assumption of the obligations of Lot Owners set forth in this Declaration by Lot Owners, their successors and assigns, the receipt of which is hereby acknowledged, and to secure the payment of assessments for Common Expenses, and other assessments, assessed against a Lot Owner by the Association as provided in this Declaration, interest, late charges and attorney fees as provided herein, hereinafter collectively referred to as the Secured Charges," a lien is expressly retained in favor of the Association on each and every Lot Owner's Lot and prorate interest in the Common Elements.

(b) For the purpose of better and more effectively securing the Secured Charges, rendering unnecessary court proceedings for the enforcement of said lien in the event of the nonpayment of the Secured Charges, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the Lot Owners, their heirs, successors, administrators, and assigns, hereby transfer and convey unto Robert J. Notestine III, of Davidson County, Tennessee hereinafter referred to as Trustee, his successors and assigns, their respective Lots with the appurtenances, estate, title and interest thereto belonging upon the uses and trusts set forth in this Paragraph 8.

(c) Trustees agree (i) to pay the Secured Charges when due, as Provided in this Declaration (ii) to pay, discharge, or remove, any and all liens (except a first mortgage or deed of trust) which may be hereafter placed against their Lot and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; (iii) to keep their respective Lots in good repair and preservation; (iv) to comply with all of the terms and conditions of this Declaration and all rules and regulations of the Association; and (v) to pay upon demand of Trustee or the Association, all the costs and expenses, together with reasonable attorneys' fees, of any court appearance or other proceedings required by Trustee, his successors or the Association to enforce any provision of this Master Deed and By-Laws or any rule and regulation of the Association. If any Trustor fails to do any of these things, then Trustee or

the Association may do any or all of these things, and the amounts so paid shall bear interest at the highest rate allowed under applicable laws in effect from time to time from the day of payment and shall become a part of the Secured Charges secured hereby.

(d) If a Trustor shall pay the Secured Charges when due, then this trust conveyance shall be of no further force or effect with respect to such Trustor's Lot. If the Secured Charges with respect to any Lot are not paid promptly when due, this trust conveyance shall remain in full force and effect, and the said Trustee, or his successor in trust, is hereby authorized and empowered, upon giving twenty days notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee to sell said Lot at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from the equity of redemption, homestead, dower and all exemptions of every kind, which are hereby expressly waived; and the said Trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Association may, at any time after default in the payment of any of the Secured Charges, enter and take possession of said property, and shall only account for the net rents actually received by it. It is further agreed that, in the event the Association fails, before instructing Trustee to sell said Lot, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the Trustee as follows:

(1) First, to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien;

(2) Second, to the payment of all taxes which may be unpaid with respect to such Lot;

(3) Third, to the payment of all unpaid Secured Charges with respect to such Lot;

(4) Fourth, the residue, if any, will be paid to the Lot Owner of such Lot, his order, representatives or assigns;

(e) In the case of the death, absence, inability, or refusal to act of said Trustee at any time when action under the foregoing power and trusts may be required or for any other reason, the Association is hereby authorized and empowered to name and appoint a successor to the Trustee by an instrument in writing to be recorded in the Register's Office for Davidson County, Tennessee, and the title herein conveyed to the above named Trustee shall be vested in said successor.

9. EASEMENTS.

Easements are hereby granted as follows:

(a) The following easements are granted to the Association for the following purposes:

(1) Easements through or over the Lots and any Limited Common Element allocated to any Lot for the purpose of maintaining or repairing any portion of the Common Elements, Limited Common Elements or any Lot. All incidental damage caused to a Lot by such maintenance or repair work shall be promptly repaired at the expense of the Association;

(2) Easements for encroachments of any portion of the Common Elements upon the boundary of any Lot whether caused by the settlement of the Building or by minor inaccuracies in the Plat of the Planned Unit Development as set forth in Exhibit A-2, or rebuilding of any part of the building, whether such encroachments now exist or hereafter may exist. All such easements shall continue until such encroachments shall cease to exist.

(b) As an appurtenance to each Lot, easements are granted to the Lot Owners for encroachments by any portion of the boundaries of each Lot upon the Common Elements, whether caused by he settlement of the Building or by minor inaccuracies in the Plat of the Planned Unit Development as set forth in Exhibit A-2, or rebuilding of any part of the Building, whether such encroachments now exist or hereafter may exist. All such easements shall continue until such encroachments shall cease to exist.

(c) Easements are reserved to Declarant, its agents and invitees to the extent necessary, as determined by Declarant, to enable Declarant to carry on any sale or leasing activity, as more specifically provided for in Paragraph 16 of this Declaration.

10. ASSOCIATION.

The operation of the Planned Unit Development shall be conducted by the Hamilton Crossings Townhomes Owner Association, Inc., herein called the Association, a corporation, not for profit, under the laws of Tennessee, which shall be organized and shall fulfill its functions pursuant to the following provisions:

(a) A representative or representatives of the Declarant shall serve as the sole members of the Board of Directors of the Association until such time as all One Hundred Sixty Eight (168) existing Lots in the Planned Unit Development are sold.

(b) After all Lots have been sold by the Declarant, the Board Members of the Association shall be elected by the Lot Owners, and the Declarant shall resign

its membership in the Association and on the Board of the Association.

(c) The By-Laws of the Association shall be in the form attached as Exhibit "B."

(d) The Association shall be incorporated under a Charter in the form attached as Exhibit "C."

(e) The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to a Lot.

(f) Whenever the decision of a Lot Owner is required under any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the Lot Owners or by his or her duly authorized and appointed proxy who would cast the vote of such Lot Owner if in an Association meeting, unless the joinder of the record owners of the Lot is specifically required by this Declaration.

(g) The Lot owners shall be Members of the Association.

11. INSURANCE.

(a) The Association shall maintain the following insurance coverage:

(1) Multi-peril, all risk type, fire and extended coverage insurance covering the entire Planned Unit Development. The multi-peril, all risk type policy purchased by the Association shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The face amount of such policy or policies shall not be less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the property required to be covered by this paragraph. Such policy shall contain an agreed value endorsement. Such insurance coverage's may exclude foundation and excavation costs, but shall afford protection against loss or damage as is commonly covered by a multi-peril all risk type policy with fire and extended coverage endorsement, and such other risks as are customarily covered with respect to buildings similar to the Building.

(2) Public liability insurance shall be secured in such amounts, and with such coverage, as shall be determined by the Board of Directors of the Association but such policy or policies shall be in an amount not less than One Million Dollars ($1,000,000) per occurrence, including, but not limited to, hired automobile and non-owned automobile.

(3) Workman's compensation as required by law

(4) Directors and officers liability insurance in an amount determined by the Board of Directors, but not less than $250, 000 per occurrence and

(5) Such other insurance as the Association shall determine from time to time to be desirable and in the best interest of Lot Owners:

(b) Any change which has the effect of decreasing the type or amount of

insurance required under the terms of this Declaration, or which lowers the rating required of an insurance carrier, shall require prior approval in writing of seventy-five percent (75%) of the votes of the Association.

(c) All policies of insurance shall show the named insured, in form and substance, similar to the following:
"Hamilton Crossings Townhomes Owner Association, Inc., for use and benefit of the individual Lot Owners." Such policies must provide for at least ten (10) days notice to the Association prior to the cancellation or substantial modification of the insurance coverage.

(d) All hazard insurance policies shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of B-V1 or better.

(e) Premiums upon insurance policies purchased by the Association shall be paid by the Association and the costs thereof included in the Common Expenses.

12. USE RESTRICTIONS.

The use of the Planned Unit Development shall be in accordance with the following provisions:

(a) Each of the Lots shall be occupied only by a family, individuals, or guests as a residence, and for no other purpose. No Lots may be rented on a daily or weekly basis.

(b) No Lot may be divided or subdivided into a smaller Lot, nor any portion thereof sold or otherwise transferred.

(c) The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Lots.

(d) No use or practice shall be permitted in the Lots which is the source of annoyance to residents, or which interferes with the peaceful possession and proper use of the Planned Unit Development by its residents. All parts of the Planned Unit Development shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Lot Owner shall permit any use of his Lot, or of the Common Elements, which will increase the rate of insurance upon the Planned Unit Development. No immoral, improper, offensive, or unlawful use shall be made of the Planned Unit Development or any part thereof. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification, or repair of the Planned Lot Development shall be the responsibility of the person or entity responsible for the maintenance and repair of the property concerned.

(e) Reasonable rules and regulations concerning the use of the Planned Unit Development property may be made and amended from time to time by the Board of Directors in the manner provided by its Charter and By-Laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners and residents of the Planned Unit Development upon request.

(f) Costs incurred by the Declarant or his heirs and assigns in enforcing these restrictions; conditions and covenants.

13. DECLARANT'S LOTS AND PRIVILEGES.

(a) Declarant is irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease, or rent lots to any person approved by it. Declarant shall have the right to transact, on the Planned Unit Development property, any business deemed necessary by Declarant to consummate the sale, lease, or resale of LOTS, including, but not limited to, the right to post signs, to use the Common Elements and to show Lot. Signs and all items pertaining to sales shall not be considered Common Elements and shall remain the property of Declarant.

(b) As long as any Lot belonging to Declarant remains unsold, neither the Lot Owners, nor the Association, nor the use of the Planned Unit Development property, shall interfere with the sale of any Lot owned by the Declarant. The Declarant shall own such Lot under the same terms and conditions as other Lot Owners, save for the right to sell, rent or lease as contained in this paragraph, including the privilege to vote and the duty to pay assessments on the Lot so held.

(c) The Declarant may waive in writing any power, duty, or office it may have pursuant to the Declaration.

14. PROFESSIONAL MANAGEMENT.

The Association may enter into a contract for the management of the Planned Unit Development with a professional property management company approved by the Board of Directors. The management contract shall be for an initial term of one (1) year and may be canceled by either party upon ninety (90) days written notice. A decision to establish self management by the Association shall require the prior written consent of sixty-seven percent (67%) of the votes of the Association.

15. NOTICE OF MORTGAGE LIEN OR SUIT.

(a) A Lot Owner shall give notice to the Association of every lien upon his Lot other than for taxes and special assessments, within ten (10) days after the attaching of the lien.

(b) Notice shall be given to the Association of every suit or other proceeding which may affect the title to a Lot within five (5) days after the Lot Owner receives knowledge thereof.

(c) Failure to comply with this Paragraph 15 will not affect the validity of any

mortgage instrument or the enforcement thereof at any public or judicial sale.

16. COMPLIANCE DEFAULT AND REMEDIES.

Each Lot Owner shall be governed by, and shall comply with, the terms of this Declaration, the Charter, By-Laws, and Rules and Regulations adopted pursuant thereto, as any of the same may be amended from time to time. In addition to the remedies provided by the Horizontal Property Act, a default by a Lot Owner shall entitle the Association, acting through the Board of Directors or through the Managing Agent, to the following relief:

(a) Additional Liability. A Lot Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member of his family, or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a Lot, or its appurtenances.

(b) Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

(c) No waiver of Rights. Failure of the Association or any Lot Owner to enforce any covenant, restriction or other provision of the Horizontal Property Act, this Declaration, the Charter, the By-laws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter. All rights, remedies and privileges granted to the Association or any Lot Owner pursuant to the terms of the Horizontal Property Act, this Declaration, the By-laws or Rules and Regulations of the Association shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising such other privileges as may be granted to such party by the Horizontal Property Act, the instruments above named, or at law or equity.

(d) Abating and Enjoining Violations. The violation of any provisions of the Declaration and the Bylaws, or any restriction, condition or regulation adopted by the Board of Directors, or the breach of any covenant or provision herein contained, shall give the Board of Directors or its Managing Agent the right, in addition to any other rights provided for in this Declaration:

(1) To enter (either peaceably or forcible) without liability to such Lot Owner for such entry) upon the Lot, or any portion of the Lot upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board of Directors, or its employees or agents, shall not thereby be

deemed guilty in any manner of trespass; or

(2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach or

(3) to take possession (either peaceably or forcibly without liability to such Lot Owner for such entry) of such Lot Owner's interest in the Land and to maintain an action for possession of such Lot in the manner provided by law.

(e) Legal Proceedings, Any violation of the provisions of the Horizontal Property Act, this Declaration, the By-laws, or the Rules and Regulations adopted pursuant thereto, shall be grounds for relief including, but not limited to, an action for money damages, injunctive relief, specific performance, foreclosure of the lien for payment of all assessments, or sale of the Lot pursuant to subparagraph (f) hereof. All expenses of the Association incurred in connection with any such actions or proceedings, including court costs, attorney's fees, all damages and interest thereon at the highest rate allowed by applicable law, shall be assessed against such defaulting Lot Owner and shall be deemed part of his respective share of the Common Expenses. The Association shall have a lien for all of the same upon the Lot and its appurtenant interest in the Common Elements, upon all of the Lot Owner's additions and improvements thereto and upon all of his personal property in his Lot or located elsewhere on the land. Such lien shall be subordinate to the lien of a recorded first mortgage or deed of trust on the Lot. In the event of any such default by a Lot Owner, the Board of Directors and the Managing Agent, if so authorized by the Board of Directors, shall have the authority to correct such default, and to do whatever may be necessary for such purpose. All expenses incurred in connection therewith shall be charged to and assessed against such defaulting Lot Owner.

(f) Judicial Sale. If any violation by a Lot Owner (or other occupant of a Lot) continues or occurs repeatedly during any ten (10) day period after notice of such violation from the Board of Directors, the Board of Directors shall have the power to terminate such Lot Owner's rights as a Lot Owner. The Board of Directors shall issue a written notice to such defaulting Lot Owner terminating his right to continue to occupy, use or control his Lot. Thereafter, the Board of Directors shall file an action seeking a decree terminating such Lot Owner's right to occupy, use or control his Lot, and ordering that all right, title and interest of such defaulting Lot Owner in his Lot and in the Common Elements be sold at a judicial sale. The judicial sale shall be held upon such notice and terms as the Court shall determine, except that the court shall enjoin the defaulting Lot Owner from reacquiring his interest at the sale. Such judicial sale shall be subject to the lien of any existing deed of trust or mortgage. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney's fees and

all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Lot Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder, or any liens, shall be paid to said defaulting Lot Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Lot and the Lot Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Lot sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in such Lot and the Common Elements subject to this Declaration. Nothing in this subparagraph (f) shall be construed to limit or abrogate any other right of the Association in the event of a default or violation by a Lot Owner as is otherwise provided herein. Nor shall the Association be obligated to pursue this remedy of judicial foreclosure.

(g) Sale for Non-payment of Assessments. Notwithstanding any term or provision of this Paragraph 18, the Association shall obtain the written consent of a majority of the votes of the Board of Directors prior to the Association's exercise of any of the remedies provided in this Paragraph 18 to terminate the rights of any Lot Owner to occupy, use or control the Lot owned by him, except that in the case of the sale of a Lot for non-payment of assessments no such consent shall be required.

17. LEASE AND TRANSFER OF A Lot: NOTICE TO ASSOCIATION.

(a) Notice of Transfer or lease of Lot. Whenever a Lot Owner shall sell, lease, give or otherwise transfer his Lot, or any interest therein, such Lot Owner shall give the Association written notice within thirty (30) days (before or after closing) of the transfer, which notice shall briefly describe the transfer and shall state the name and address of the transferee or lessee. Also, the Lot Owner must provide the Association with a copy of the fully executed lease entered into with the Lessee of said Lot.

(b) Miscellaneous.

(1) All notices referred to or required under this Paragraph 20 shall be given in writing to the management company.

(2) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Paragraph 20, for the purpose of implementing and effectuating said provisions.

(3) If any transfer or lease of a Lot is made or attempted without complying with the provisions of this Paragraph 20, such transfer or lease shall be subject to each and all of the rights and options of, and remedies and actions available to, the Association hereunder and otherwise.

18. ASSOCIATION'S RIGHT TO PURCHASE AT A FORECLOSURE SALE.

(a) The Board shall have the power and authority to purchase, on behalf of the Association, any Lot, or interest therein, at a sale pursuant to this Declaration, a mortgage foreclosure, a foreclosure of the lien for Common Expenses under the Horizontal Property Act, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of Lot Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements.

(b) The Board of Directors shall have authority to make special assessments proportionately among the respective Lot Owners, and such other financing arrangements as the Board of Directors may deem desirable, in order to close and consummate the purchase of a Lot, by the Association. However, no such financing arrangement may be secured by an encumbrance on any interest in property other than the Lot to be purchased and such Lot's appurtenant interest in the Common Elements

(c) The Association shall hold or lease any Lot, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board of Directors, for the benefit of all Lot Owners. The Board of Directors shall have authority at any time to sell, lease or sublease said Lot on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Lot be sold for less than the amount paid by the Association to purchase the Lot unless Lot Owners owning not less than seventy-five percent (75%) of the Common Elements first authorize the sale for such lesser amount.

19. AMENDMENTS

This Declaration may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is considered.

(b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Members of the Association. Directors and Members not present in person or by proxy at the meetings in which the amendment is considered may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Such approval must be by sixty seven percent (67%) of the eligible votes of the Association. However, except as is otherwise provided in this section, or the Declarant may amend this Declarant, at his sole discretion, until he has conveyed the one hundred sixty eight (168) Lots.

(c) Any amendment which would prohibit the leasing of Lots shall require the approval of sixth-seven percent (67%) of the votes of the eligible membership of the Association.

(d) The power of the Declarant to amend the Declaration and Bylaws may be used to correct clerical errors and make other clarifications and to adjust boundary lines where necessary for clarification or to reflect accurate surveys. Notwithstanding this provision, the Declarant may amend the Declaration and Bylaws in any manner he decides, at his sole discretion, power to amend shall be accomplished by filing an amendment of record in the Register's Office of Davidson County Tennessee.

(e) The vote of the Members of the Association shall be necessary to approve a proposed amendment, except as is otherwise set forth in this Declaration, by a positive vote of 67% of the Members, unless a higher percentage vote is required elsewhere in this Declaration, to approve any amendment which would materially effect or change:

(i) the voting rights of Lot Owners;

(ii) the method of assessment of common expenses or the priority of the lien of the Association for unpaid assessments:

(iii) the requirement of a reserve fund for the repair or replacement of the Common Elements;

(iv) the allocation of responsibility for maintenance or repair of the Common Elements or Lots;

(v) the percentage ownership interest in the Common Elements allocated to each Lot, or the rights of Lot Owners to use the Common Elements;

(vi) the boundaries of a Lot;

(vii) or which would convert a Lot, or portion of a Lot, to Common Elements, or vice versa;

(viii) or which would add additional property to the Planned Unit Development, or withdraw a portion of existing property from the Planned Lot Development;

(ix) the right of a Lot owner to lease, sell or transfer a Lot;

(x) the method of determining when the Planned Unit Development will be reconstructed or repaired in the event of partial destruction, as set forth in paragraph 13 of this Declaration;

(xi) any provision of this Declaration which expressly benefits any mortgagee, insurer or guarantor.

(f) No amendment shall discriminate against any Lot Owner, or against any Lot or class or group of Lots, unless the Lot Owners so affected shall consent. No amendment shall change any Lot, nor the share of the Common Elements appurtenant to it, nor increase the Lot Owner's share of the Common Expenses, unless such Lot Owner and all record owners of liens thereon, shall join in the execution of the amendment.

(h) A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Register's Office of Davidson County, Tennessee.

20. TERMINATION.

The Planned Lot Development may be terminated as follows:

(a) In the event it is determined under Paragraph 13(c) that the damaged property shall not be reconstructed because of substantial loss in accordance with T.C.A. S 66-27-118 as amended, the Planned Unit Development shall be terminated.

(b) The Planned Unit Development may be terminated at any time after obtaining the prior approval in writing of all Lot Owners, and by all record owners of liens thereon in accordance with T.C.A. 66-27-109.

(c) The termination of the Planned Unit Development shall be evidenced by a deed in compliance with T.C.A. 66-27-109, certifying the facts effecting the termination, which deed shall become effective upon being recorded in the Register's Office of Davidson County, Tennessee.

(d) Any distribution of funds resulting from the termination of the Planned Unit Development shall be distributed through the Insurance Trustee to the Lot Owners according to their ownership interest in the Common Elements, as set forth in paragraph 3 of the Master Deed. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be paid to the Lot Owner and the mortgagee, as their interests may appear.

21. NON- LIABILITY OF THE DECLARANT, DIRECTORS AND OFFICERS OF THE ASSOCIATION.

The directors and officers of the Association shall not be personally liable to the Lot Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Declarant, director or officer, except for any acts or omissions found by a Court to constitute gross negligence or fraud. The Lot Owners shall indemnify and hold harmless each of the directors, officers, or Declarant, and their respective heirs, executors, administrators, successors and assigns, in accordance with the provisions of Paragraph 8 of the By-Laws.

22. SERVICE CONTRACTS.

Declarant shall assign and the Association shall assume certain service contracts designated by Declarant dealing with the maintenance and operation of the Planned Unit Development. These contracts may include, but not be limited to, bookkeeping service, lawn care, pool maintenance and garbage disposal.

23. SEVERABILITY.

The invalidity in whole or in part of any covenant or restriction, or any paragraph,

subparagraph, sentence, clause, phrase, or word, or other provision of this Declaration and the Charter, By-Laws, and Regulations or the Association shall not affect the validity of the remaining portions thereof.

DECLARANT

J. D. Eatherly

J. D. EATHERLY

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared, J. D. Eatherly, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath acknowledge himself to be Declarant, the within named bargainor, a corporation, and who executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal at Nashville, Davidson County, Tennessee, this 11th day of February, 2004.

Notary Public

My Commission Expires: Sept. 22, 2007

TAMMY R. VERSLUIS
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.
My Commission Expires SEPT. 22, 2007

EXHIBIT A
TO DECLARATION OF THE HAMILTON CROSSINGS TOWNHOMES

LEGAL DESCRIPTION

Being a tract of land lying in the First Civil District, Twenty-ninth Councilmanic District, Davidson County, Tennessee. Said tract being a portion of P.U.D. Tract No. 9, being portions of Tract No. 12, 13 and 15 of Hickory Highlands, as recorded in Deed Book 7976, Page 579, and being more particularly described as follows:

BEGINNING at a found iron rod on the Southerly margin of Hamilton Church Road in the North line of said P.U.D. Tract 9. Said point being S 41 deg. 58' 39" W, 1755 feet more or less from the intersection of the Westerly margin of Murfreesboro Road and the Southerly margin of Hamilton Church Road;

THENCE, leaving said margin, S 48 deg. 54' 27" E, 1109.86 feet to a found iron in the North line of the Hoover, Inc. property, as recorded in Deed Book 9448, Page 863;

THENCE, S 44 deg. 09' 40" W, 175.33 feet to a set iron rod;

THENCE, S 75 deg. 17' 57" W, 540.14 feet to an existing fence post, being the Northwest corner of the Hoover, Inc. property as recorded in Deed Book 6654, Page 902 and being in the East line of the Paul Anthony Hoover, et al, recorded by Instrument No. 19991209003014 23;

THENCE, N 02 deg. 34' 09" E, 26.32 feet to an existing fence post, being the Northeast corner of said Hoover property;

BK 2883 PG 344

THENCE, N 82 deg. 28' 47" W, 740.11 feet to set iron rod;

THENCE, N 80 deg. 57' 17" E, 11.23 feet to a set iron rod;

THENCE, N 80 deg. 15' 53" W, 258.12 feet to a set iron rod on the Southerly margin of Hamilton Church Road, being the Northwest corner of said Hoover property;

THENCE, said margin, N 45 deg. 17' 27" E, 780.06 feet to a set iron rod.

THENCE, along a curve to the left, having a central angle of 04 deg. 10' 47", a radius of 2,030.00 feet, a tangent 74.08 feet, an arc length of 148.09 feet, and a chord bearing and distance of N 43 deg. 12' 03" E, 148.06 feet to a set iron rod;

THENCE, N 41 deg. 06 40" E, 199.95 feet to a set iron rod;

THENCE, N 43 deg. 01' 13" E, 9.61 feet to the POINT OF BEGINNING, and containing 18.97 acres or 826,249 Square Feet.

Being a portion of the same property conveyed to Harding University, Inc. by deeds of record in Book 7656, Page 738, and Book 7976, Page 579, Register's Office for Davidson County, Tennessee.

EXHIBIT A-1
PERCENTAGE OF EACH LOTS UNDIVIDED OWNERSHIP
INTEREST IN COMMON ELEMENTS

LOT NUMBER	PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS
1	.595%
2	.595%
3	.595%
4	.595%
5	.595%
6	.595%
7	.595%
8	.595%
9	.595%
10	.595%
11	.595%
12	.595%
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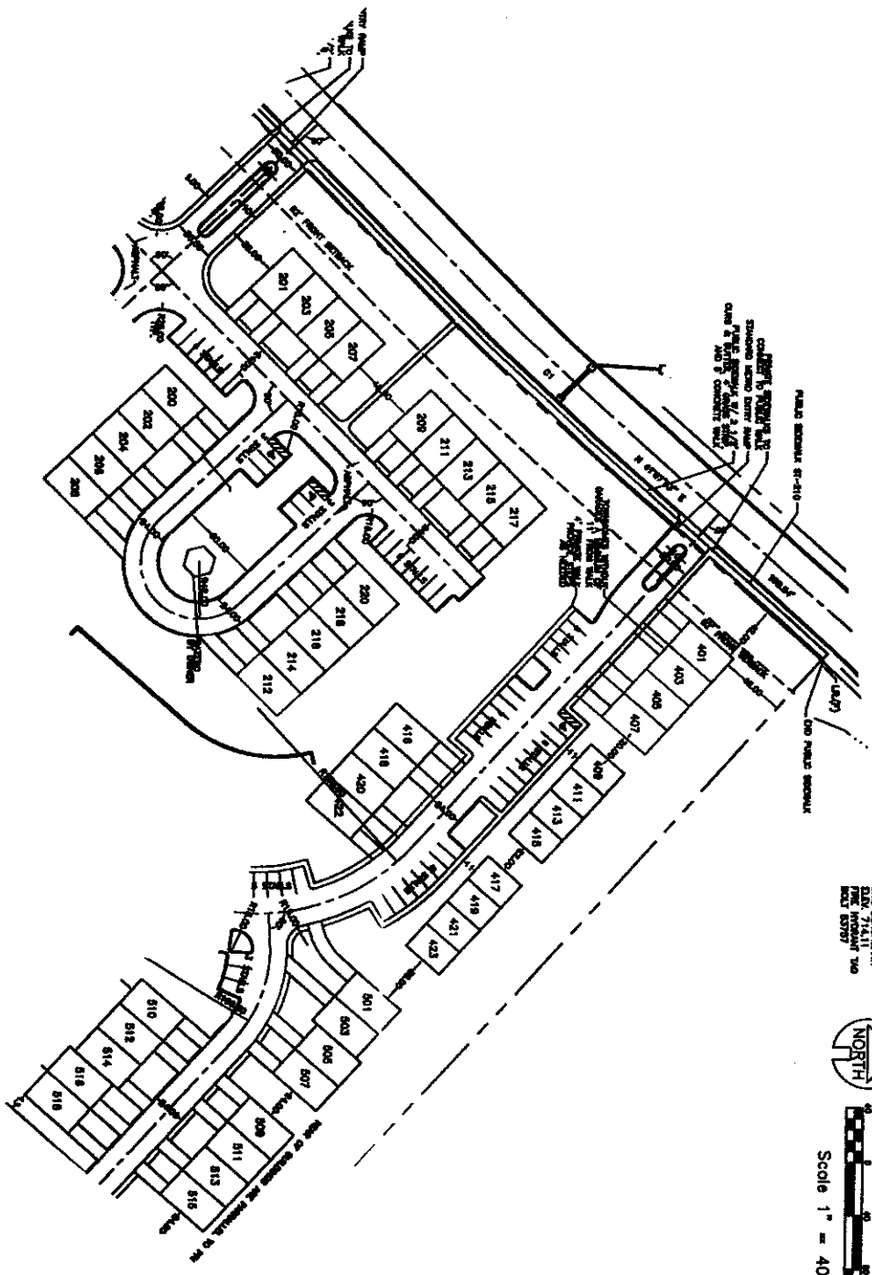
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163	.595%
164	.595%
165	.595%
166	.595%
167	.595%
168	.595%
TOTAL	100%

EXHIBIT A-2 PLAT OF HAMILTON CROSSINGS TOWNHOMES



Layout Plan

Dale & Associates
Consulting Civil Engineering
Land Planning & Zoning
Landscape Architecture
Surveying

SITE AREA = 18.974 ACRES

Scale 1" = 40'

NORTH

C3.0
3 OF 15

Hamilton Crossing Townhomes
Map 163, Parcel 388

25-B