THIS INSTRUMENT PREPARED BY:
Mollie A. Gass, Esq.
Rudy Winstead Turner, PLLC
2010 21st Avenue South
Nashville, TN 37212

Karen Johnson Davidson County
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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

# THE HOMES OF 1823 10TH AVENUE NORTH

# A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

**THIS DECLARATION** is made and entered into by **Atrium Development, LLC, a Tennessee limited liability company**, hereinafter referred to as the "Developer."

**WITNESSETH:**

**WHEREAS,** the Developer is the record owner and holder of the legal title of a tract or parcel of real property located in Davidson County, Tennessee, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

**WHEREAS,** the Developer desires to submit the Property described on Exhibit A together with all buildings, structures, improvements, and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the Horizontal Property Act of the State of Tennessee as the same may be amended from time to time for the express purpose of establishing thereon a horizontal property regime with private elements to be known as The Homes of 1823 10th Avenue North, and

**WHEREAS**, the Developer further desires to establish for its own benefit and for the mutual benefit of all future owners and/or occupants of the Property or any part thereof, certain rights, easements, all privileges in, over and upon the said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

**NOW, THEREFORE,** the Developer declares as follows:

1) **Definitions.** As used herein, and unless the context otherwise requires.

a) **"Act"** means the Horizontal Property Act of the State of Tennessee, T.C.A. §66-27-101, *et seq.*, as the same may be amended from time to time.

b) **"Association"** means **THE HOMES OF 1823 10TH AVENUE NORTH HOMEOWNER'S ASSOCIATION, INC.**, a Tennessee not-for-profit corporation.

c) **"Board"** means the Board of Directors of **THE HOMES OF 1823 10TH AVENUE NORTH HOMEOWNER'S ASSOCIATION, INC.**, a Tennessee not-for-profit corporation.

d) **"Buildings"** means the buildings located on the parcel and forming a part of the Property and containing the Units. The buildings are delineated on the Plat.

e) **"By-Laws"** mean the By-Laws of The Homes of 1823 10th Avenue North attached hereto as Exhibit C and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the property shall be deemed to be part of the By-Laws.

f) **"Common Elements"** shall mean and include General Common Elements and Limited Common Elements as those terms are defined herein.

g) **"General Common Elements"** shall mean all of the Property, except the Units and Private Elements not including the Limited Common Elements.

h) **"Limited Common Elements"** shall mean those portions of the General Common Elements designated herein for the exclusive use of the one (1) Unit to which it is assigned.

i) **"Private Elements"** shall mean and include the lot area upon which the unit is located. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is shown on the Plat. Lots, as referenced on the Plat, shall be deemed to refer to the Private Elements.

j) **"Developer"** shall refer to Atrium Development, LLC.

k) **"Majority"** or **"Majority of the Unit Owners,"** means at least fifty-one (51%) percent of the Owners of the Units.

l) **"Declaration"** means this instrument as amended from time to time.

m) **"Occupant"** means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

n) **"Parcel"** means the parcel(s) or tract(s) of real estate described on Exhibit A attached to this Declaration and submitted hereby to the provisions of the Act.

o) **"Person"** means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

p) **"Plat"** means the Plat, plats of survey or site plans of the Parcel or Parcels submitted to the provisions of the Act showing the number of each Unit and the exterior boundary of its Private Elements and other date necessary for identification, said Plat or Plats being attached hereto as Exhibit B.

q) **"Property"** means all the land, property and space comprising the Parcel as defined in Item (n) above, and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of Unit Owners, submitted to the provisions of the Act.

r) **"Record"** or **"Recording"** refers to the record or recording in the Register's Office for Davidson County, Tennessee.

s) **"Rules and Regulations"** refer to the rules and regulations concerning the use of the Units and the Common Elements, as adopted from time to time by the Board in accordance with the Declaration and By-Laws.

t) **"Unit"** shall mean a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private elements and the residence and improvements now and hereafter located hereon. The Units are identified by an alphabetic letter or number (or combination thereof) on the Plat and may be held and conveyed by reference to such letter. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Each Unit is assigned a letter as shown on the Plat. Any Unit may be jointly or commonly owned in any state recognized under applicable law. For purposes herein, the term "Unit" shall equate to the same meaning as the term "apartment" in the Horizontal Property Act.

u) **"Unit Owner"** means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, its respective Private Elements, and of the undivided interest in the Common Elements appurtenant thereto, and shall be deemed the same as "co-owner" under the Act. Unless specifically provided otherwise herein, Developer shall be deemed a Unit Owner so long as he is the legal title holder of any unit.

2) **Submission of Property to the Act.** The Developer does hereby submit and subject the Parcel and the Property to the provisions of the Horizontal Property Act of the State of Tennessee as amended from time to time and does hereby establish a Horizontal Property Regime to be known as The Homes of 1823 10th Avenue North.

3) **Plat.** The Plat or site plan sets forth the numbers and location of each Unit and other data as required by the Act.

4) **Units.** The legal description of each Unit shall consist of the identifying letter or number (or combination thereof) of each Unit as shown on the Plat. Every deed, lease, mortgage, deed of trust, or other instrument shall legally describe a Unit by its identifying letter or number as shown on the Plat, and every such description by letter or number shall be deemed good and sufficient for all purposes as provided in the Act. Except as provided in 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 tracts or parcels different from the whole Unit as sho[illegible]th Pl[illegible]

5) **Association and Management of the Property.**

a) Association of Unit Owners and Administration and Operation of the Property. There has been formed an Association having the name **THE HOMES OF 1823 10TH AVENUE NORTH HOMEOWNER'S ASSOCIATION, INC.**, a Tennessee not-for-profit corporation, which Association shall be the governing body for all Unit Owners, and shall be operated to provide guidelines for the maintenance, repair, replacement, administration, and operation of the property, as provided in the Act, this Declaration and the By-Laws. The Unit Owners shall be members of the Association, with each Unit holding an undivided membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The By-Laws for the Association shall be the By-Laws attached to this Declaration as Exhibit C and made a part hereof. The Board of Directors of the Association shall be elected and serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and any funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners, in accordance with the provisions of this Declaration and By-Laws. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Developer shall have three (3) votes per Unit as provided below).

b) Voting Membership.

**Class A.** Class A members shall be all Unit Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Unit owned. When more than one person holds any interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any unit.

**Class B.** The Class B member shall be the Developer and shall be entitled to three (3) votes for each Unit owned. The class B membership shall cease the earlier of (i) when 100% of the Units are sold, or (ii) three years from the date of the first Unit sold.

c) Management of Property. The Board shall have the authority to engage the services of an agent (the "Managing Agent") to maintain, repair, replace, administer and operate the property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subparagraph (d) below. Said agent shall be required to maintain fidelity bond coverage on its employees handling Association Funds. The cost of said services shall be a common expense.

d) Initial Management Contract. The first Board, appointed as provided herein, may ratify and approve the Management Agreement between the Developer (if applicable) on behalf of the Association, and a management corporation, to act as Managing Agent for the Property, for a term as approved by the first Board, but not to exceed one year.

e) Use by the Builder. During the period of sale by the Developer (and or any builders of any Units), the Developer and/or any such builder or their agents, employees, contractors, etc. shall be entitled to access, ingress, and egress from the buildings and property as may be required for purposes of sale of the Units.

f) Non-Liability of the Directors, Board, Officers and Developer. To the extent permitted by law, neither the directors nor officers of the Association shall be personally liable to Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. Unit Owners shall indemnify and hold harmless each of the directors or officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and By-Laws.

6) **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation of application of the provisions of this Declaration or By-Laws, the determination thereof by the Board shall be final and binding on all Unit Owners.

7) **Ownership of the Common Elements (if applicable).**

a) Ownership of the Common Elements shall be vested in the Association.

b) Subject to the provisions concerning voting rights herein above contained, each Unit is hereby allocated an equal percentage ownership in the Association. The percentage of ownership interest shall remain constant unless hereafter changed by recorded amendment to the Declaration consented. Said ownership interest shall be an undivided interest, and the undivided interest in the Association shall be owned by the Unit Owners as Tenants in Common in accordance with their respective percentages of ownership The ownership

appurtenant to such Unit. The undivided interest in Common Elements appurtenant to any Unit shall be deemed conveyed or encumbered with the Unit, even though the legal description in the instrument conveying or encumbering such unit may refer only to the fee title to that Unit.

8) **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements (and not the Private Elements) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend not only to each Unit Owner, but also to his agents, servants, tenants, family members, customers, invitees, and licensees. However, each Unit Owner shall have the right to exclusive use and possession of the Private Elements and Limited Common Elements, and shall be used by such Unit Owner(s) subject to the Rules and Regulations of the Association.

9) **Storage Areas and Parking Spaces.** Storage and parking areas shall be reserved for priority use by the Unit Owners in proportion to their interest in the Association, or as otherwise prescribed by applicable rules and regulations adopted by the Board.

10) **Common Expenses.**

a) Common Expenses and Enforcement. Except as specifically provided otherwise herein, each Unit Owner shall be responsible for paying his equal proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with this Declaration and By-Laws (which expenses are herein sometimes referred to as "Common Expenses"), including, but not limited to, the maintenance and repair of the Property and any and all replacements and additions thereto. The payment of Common Expenses shall be in such amounts and shall be payable at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of his equal share of the Common Expenses by waiver or nonuse of enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail or refuse to make any such payment for common expenses when due, the remaining Unit Owners may pay said payment and the amount thereof together with interest at the rate of Ten (10%) percent per annum, after said payments become due and payable, shall constitute a lien on the Unit for which benefit the payment is made on behalf of the remaining Unit Owners. Each Unit Owner shall be personally liable for his portion of payments accrued while he is the owner of a Unit, and shall remain personally liable for such payments even after he is no longer the owner of the Unit; however, said personal obligation shall not pass to successors in title unless assumed by them or as required by Tennessee Code Annotated, Section 66-27-101, *et seq.*, provided that, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

The Developer shall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements, and no Unit owned by the Developer shall be assessed for Common Expenses, or otherwise, until such time as construction of such Unit is completed and the Unit is occupied by a tenant of Developer or is sold by the Developer. This paragraph of Section 10(a) may not be modified or amended without the unanimous written consent of all Unit Owners.

b) Mortgage and Deed of Trust Protection. The lien against a Unit Owner for Common Expenses shall be subordinate to the lien of a recorded First Mortgage or Deed of Trust on the interest of such Unit Owner, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the Mortgagee or Beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security), or forecloses its Mortgage or Deed of Trust. This subparagraph shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgagees and Deed of Trust Beneficiaries of record.

11) **Mortgages and Deeds of Trust.** Each Unit Owner shall have the right, subject to the provisions herein, to mortgage his Unit together with his respective ownership interest in the Common Elements Association. No Unit Owner shall have the right or authority to mortgage or place a lien on the property or any part thereof, except to the extent of his own Unit and its appurtenant interest in the Common Elements Association.

12) **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for his Unit, its Private Elements, its appurtenant interest in the Common Elements and Limited Common Elements, and its corresponding interest in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the property as a whole, then each Unit Owner shall pay its proportionate share, in accordance with such unit owner's respective percentage of ownership interest in the Association, of the total tax obligation, and, in said event, such taxes shall be deemed a Common Expense.

13) **Insurance, Damage, and Reconstruction.** The Board may obtain insurance for the Property and the Common Elements, exclusive of the Units, Private Elements, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for

the full insurable replacement cost of the Property and the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement costs shall be deemed the cost of restoring the Property and the Common Elements, or any part thereof, to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board, as the Trustee for the Unit Owner in proportion to the Unit Owner's respective percentages of ownership in the Property and the Common Elements, as set forth in this Declaration, and for the holders or mortgages on the Units, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners. The premiums for such insurance shall be a common expense; however, premiums for such insurance shall be separately billed equally to Unit Owners.

In the event of damage to or destruction of any of the Property or any Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds (2/3) of all buildings require reconstruction), the Board shall, in its sole and absolute discretion, determine and without intervention of any Unit Owner arrange for the prompt repair and restoration of the damaged portions of the Property and all Common Elements substantially in accordance with the original plans and specifications therefor. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners with each Unit Owner to bear an equal proportion thereof. Notwithstanding the above, unless the Board does carry hazard insurance covering the damage to the Property and Common Elements, the Board shall not be responsible for the repair, replacement or restoration of any Unit or Private Elements for which the responsibility or maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, or equipment installed in the Unit by a Unit Owner or occupant.

The Board may also obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance in such amounts as it deems desirable, insuring each Unit Owner, mortgagee of record, the Association, its officers, directors, and employees, Owner, and the Managing Agent, if any, from liability in connection with the Property. The premiums for such insurance shall be a Common Expense; however, premiums for such insurance shall be separately billed equally to each Unit Owner.

The Board may also obtain Fidelity Coverage covering officers, directors and employees who handle or are responsible for handling Association funds. Such bonds shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

The Board may also obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-Laws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee.

In the event the Board does not maintain insurance, each Unit Owner shall be responsible for obtaining hazard insurance which includes liability coverage on his Unit, the contents of his Unit and Private Elements, and the Limited Common Elements serving his Unit, as well as additions and improvements thereto, and those parts of the Unit for which the responsibility of maintenance and repair is that of the Unit Owner, and for decorations, furnishings, and person property therein, and personal property stored elsewhere on the property, if any. **Each Unit Owner shall be required to list the Association as an additional insured on said Unit's hazard insurance policy.**

14) **Maintenance, Repairs, Replacements and Easements.** Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and its private elements and Limited Common Elements. Except to the extent hereinafter set forth, maintenance of, repairs to and replacements within the General Common Elements shall be the responsibility of and shall be furnished by the Association, and the cost thereof shall be part of the Common Expenses, subject to Item No. 10(a) herein and further subject to the By-Laws, and Rules and Regulations of the Association. The expenses for the maintenance, repair, or replacement of a Unit's water heater, furnace, air conditioner, heating and air conditioning ducts, and plumbing and electrical wiring and other items including, but not limited to the Limited Common Elements, serving only such Unit, shall be borne by the Owner of the Unit to which such Limited Common Elements are appurtenant. Maintenance of the shared concrete driveway (if one is present) shall be borne by the Units equally. The Board shall direct Unit Owners who stand to be benefited by maintenance of, repairs to, and replacements to the exterior of said Unit, its private elements and/or within the Limited Common Elements to arrange for such maintenance, repairs and replacements in the name and for the account of such benefited Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the property from all mechanic's or materialmen's lien claims that maintain, repair, or

replace the electrical wiring, plumbing, or other utilities of a Unit. Should the benefited Unit Owner fail or refuse to maintain, repair and/or replace, as directed by the Board, the exterior of the benefited Unit, its private elements, and/or within its Limited Common Elements, the Board or any other Unit Owner (or Owners) may cause said maintenance of, repairs to, and/or replacements be made to the exterior of said Unit, its Private Elements and/or within its Limited Common Elements, and perfect remedies as recited in Article No. 19 hereinafter recited.

If, due to the act or neglect of a Unit Owner, or of his agent, servant, tenant, family member, invitee, licensee, or household pet, damage shall be caused to the Private Elements owned by others, or if general maintenance of utility lines, etc. are required and such repair or damage is on another unit owner's private elements, then the Unit Owner which said utility services benefit shall pay for such damage or such maintenance, repairs and replacements.

A joint and mutual easement hereby exists for any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit's Private Elements or Common Elements, if applicable. An easement exists for ingress and egress and maintenance in favor of any public utility providing utility services to the apartments and the Units and to each Unit Owner if necessary to maintain their unit by accessing the other Unit's Private Elements. Reasonable notice to access the adjoining Unit's Private Elements shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

The authorized representatives of the Association, Board, or of the Managing Agent with approval of the Board, shall be entitled to reasonable access to the Private Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements in the event of an emergency, or in connection with maintenance of, repairs to, or replacements within the Common Elements, Limited Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving other Units, its Private Elements, Common Elements and Limited Common Elements, or to make any alteration required by any governmental authority.

15) **Alterations, Additions or Improvements.** Except as provided in paragraph No. 16 herein, no alteration of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize alterations, additions, and improvements of the Common Elements as provided in the By-Laws. Any Unit Owner may make alterations, additions or improvements within his Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions and improvements. Any alteration and/or maintenance made by a Unit Owner to the exterior of his Unit shall be in strict conformity to the architectural design and scheme of the Unit as of the date of this instrument unless approved by the unanimous agreement of the Unit Owners.

16) **Decorating.** Each Unit Owner, at his or her own expense, shall furnish and be responsible for all decorating within his Unit and Limited Common Elements serving his Unit, as may be required from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each Unit Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. All windows and screens of a Unit shall be cleaned and washed, and any damage thereto repaired, at the expense of the Unit Owner of the Unit.

17) **Encroachments.** If any portion of the Common Elements shall actually encroach upon any Unit or its Private Elements, or if any Unit or its Private Elements or Limited Common Elements shall actually encroach upon any portions of the Common Elements, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

18) **Use and Occupancy Restrictions.** Subject to the provisions of the By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by zoning laws. Each Unit shall be used as one single family residence or such other use permitted by this Declaration, and for no other purpose, except that professional and quasi-professional people may use their residence (not in violation of municipal zoning laws) as an ancillary or secondary facility to an office established elsewhere. Leasing under both long-term and short-term rental agreements is permitted. The foregoing restrictions as to residence shall not, however, be constructed in such manner as to prohibit a Unit Owner from (a) maintaining his personal professional library; (b) keeping his personal business or professional records or account; or (c) handling his personal business or professional telephone calls or

correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

The Common Elements, if applicable, shall be used only by Unit Owners and their agents, servants, tenants, family members, customers, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner.

19) **Remedies.** In the event of any violation of the provisions of the Act, this Declaration, By-Laws, or rules and regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit), the Association, or its successors or assigns, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, By-Laws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereinafter in this Paragraph No. 19, or for any combination of remedies, or for any other relief. All expenses in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of fifteen (15%) percent per annum or such other uniform lawful rate as the Board shall determine, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board or Paying Unit Owner shall have a lien for all of the same, as well as for nonpayment of common expenses, upon the Unit, and its appurtenant interest in the Common Elements of such defaulting Unit Owner, and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a recorded first mortgage or deed of trust on the Unit, to the extent herein set forth in Paragraph No. 10(b) hereof. In the event of any such default by a Unit Owner, the Board and/or Paying Unit Owner shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgage and deed of trust liens against the Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration: (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the Property upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration, the By-Laws, or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board or Paying Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of said defaulting Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner of Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use, or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall be first 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 Unit 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 Unit Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such

possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchase shall take the interest in the Unit Ownership sold subject to this Declaration.

20) **Amendments.** The provisions of this Declaration may be amended by an instrument in writing, setting forth such amendment, signed by sixty-seven (67%) percent of the Unit Owners; provided, however, that all lien holders of record have been notified by certified mail of such amendments, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument.

However, if the Act, this Declaration or the By-Laws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument amending any provision of this Declaration with respect to such action shall be signed by all Unit Owners and/or all lien holders or both as required by the Act or this Declaration. Any amendment shall be effective upon the recording of such instrument in the Office of the Register of Deeds of Davidson County, Tennessee: provided, however, that no provisions in this Declaration may be amended so as to conflict with the provisions of the Act.

Notwithstanding the above, the Developer shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development or correction of clerical errors, or as may be required to obtain FHA/VA, FNMA, FHLMC or other desired approval for the horizontal property regime.

21) **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

22) **Rights and Obligations.** Each Grantee or Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. 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 Developer are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges hereby imposed 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 said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith, pursuant to Tennessee Code Annotated, Section 66-27-111, as they may be amended from time to time. The acceptances of a deed of conveyance, devise, or lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the By-Laws, and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner 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.

The terms and conditions of the Declaration, By-Laws, and rules and regulations of the Association may be incorporated by reference in, and become part of, the agreement between any first mortgagee and any present or future Unit Owner who enters into such an agreement with a first mortgage. When so incorporated, any default in the terms and conditions of this Declaration, By-Laws, and rules and regulations may be considered by the first mortgagee as a default, whereupon said first mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

23) **Condemnation.** In the event of a taking of part of the Common Elements in condemnation or by eminent domain, the award made for such taking shall be payable to the Association. If a majority of the Board in their sole and absolute discretion approve the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Board does not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of such Unit's percentage of ownership in the Common Elements.

24) **Rights Reserved.** A Unit Owner's right of enjoyment in the Common Elements shall be subject to:

a. The right of the Association, as provided in its By-Laws or rules and regulations, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations;

b. The right of the Association to charge reasonable fees for the use of any part or parts of the Common Elements;

c. The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution or dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless both members of the Association have agreed to such dedication, transfer, purpose, or condition; and

d. The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Common Elements and the Units.

25) **Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations.** Notwithstanding anything to the contrary contained in this Declaration or in the By-Laws of the Association, all terms, conditions, regulations, and requirements which are now existing, or which may be amended from time to time by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to Planned Unit Developments, if applicable, are hereby incorporated as terms and conditions of this Declaration and By-Laws and such shall be governing upon the Property, Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in T.C.A., Section 66-27-101, *et seq.*, as amended.

Specifically, without limitation upon the foregoing, the following declarations shall be controlling over any terms of this Declaration or By-Laws which are in conflict therewith. Any portions of this Declaration or By-Laws which are in conflict with this paragraph, or any portion of the regulations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to apartments, are hereby deleted and the following rights of mortgagees are itemized as follows:

a. A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration, By-Laws, or any of the PUD documents, which is not cured within thirty (30) days.

b. Any first mortgagee of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgages, or deed of trust, or by foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit.

c. Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned) of Units have given their prior written approval, the Association shall not be entitled to:

    a. Change the pro rata interest or obligations of any Unit for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and for (b) determining the pro rata share of each Unit in appurtenant real estate and any improvements thereon, which are owned by Unit Owners in undivided pro rata interests (Common Elements);
    b. Use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement or reconstruction of such improvements, except as provided by T.C.A. Section 66-27-118 in case of substantial loss to the Common Elements.

d. First mortgages shall have the right to examine the books and records of the Association.

e. An adequate reserve fund for the replacement of the Common Elements will be established and funded by regular monthly payments rather than by special assessments.

f. As set forth in T.C.A., Section 66-27-120, all taxes, assessments, and charges which may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the Unit and not to the Property as a whole.

g. No Unit Owner, or any other party, shall have priority over any rights of the first mortgagees of Units in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

h. Any agreement for professional management of the Property, whether it be by Owner, her successors and assigns, or any other person or entity, may be terminated on ninety (90) days' written notice, and the terms of any such so provide and shall not be of a duration in excess of three (3) years.

i. The association shall give to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, or any lending institution servicing such mortgages as are acquired or insured by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, notice in writing of any loss to or the taking of Common Elements if such loss or taking exceeds Ten Thousand ($10,000.00) Dollars. The Association may rely upon the information contained in the book entitled "Mortgage of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby.

j. The interest of a first mortgagee in a mortgaged Unit shall be superior to the interest of any person, group, partnership, corporation, or entity of any kind, including any interest the Association, Developer, or any Unit Owner may have in any portion of the Property, regardless of the nature of the interest or the manner in which it is acquired.

k. Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its deed of trust, and under the laws of the State of Tennessee.

26) **Trustee as Unit Owner.** In the event title to any Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

27) **Notices.** Notices provided for in Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association or any Unit Owner, as the case may be. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by Unit States registered of certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage of trust deed.

28) **Severability.** If any provision of this Declaration or By-Laws, or any section, sentence, clause, phrase, word, or the application thereof in any circumstances, is held invalid, the validity or the remainder of this Declaration and the By-Laws and of the application of any such provision, section, sentence, clause, phrase, or word if any other circumstances shall not be affected thereby, and the remainder of this Declaration of the By-Laws shall be construed as if such invalid part was never included therein.

29) **Captions.** The captions are inserted only as a matter of convenience, and in no way define, limit or describe the scope of these provisions or the intent or any provision thereof.

30) **Gender.** The use of the masculine gender in this Declaration and in the By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so required.

31) **Attorney's Certificate.** The attorney's opinion as required under the terms of the TCA, Section 66-27-103 is attached hereto as Exhibit D and made a part hereof.

32) **Fences.** In no event shall any chain link fences be permitted unless erected by Developers or existing at the time of acquisition of the Property by Developer(s).

[SIGNATURE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 28th day of June, 2021.

DEVELOPER:

**Atrium Development, LLC**

**By: Samuel Deaton**
**Title: Managing Member**

**STATE OF TENNESSEE**
**COUNTY OF DAVIDSON**

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, the within named, Samuel Deaton, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he is the Managing Member of Atrium Development, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such Managing Member executed this instrument on behalf of Atrium Development, LLC, for the purposes therein contained.

Witness my hand and official seal this 28th day of June, 2021.

Notary Public

My Commission Expires:
11/6/24

BROOKE POWERS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

EXHIBIT A

EXISTING LEGAL DESCIPTION

Land in Davidson County, Tennessee, being Lot No. 19 on the Plan of C. H. Stier's Addition to Nashville of record in Plat Book 332, Page 82, in the Register's Office for Davidson County, Tennessee.

Said Lot No.19 fronts 50 feet on the Westerly side of 10th Avenue North, and runs back between parallel lines, 174 feet more or less to Owen Street.

Being the same property conveyed to Leonard Walker, **Jr.,** and wife, Joyce W. Walker By Warranty Deed from Tommie Mayberry, a widow, of record in Book 4509, Page 944, Register's Office for Davidson County, Tennessee: the said Leonard Walker, Jr., having since died intestate on April 28, 1993, leaving Joyce G. Walker as surviving tenant by the entirety; the said Joyce G. Walker having since died intestate on October 21, 2015, a resident of Davidson County, Tennessee, survived by her sole heirs at law, Sharon E. Dobson, Constance G. Heard, Jacquelyn D. Blue, and Maurice L. Walker, as evidenced by an Affidavit of Heirship of record as Instrument Number 20170317-0026189, said Register's Office.

This is improved property known as **1823 10th Avenue, Nashville, TN 37208.**

EXHIBIT B

PLAT