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DECLARATION OF CONDOMINIUM FOR MALVERN, A CONDOMINIUM

This Declaration of Condominium for Malvern, a Condominium (this "Declaration") is made the date set forth below by **Malvern Music 17, LLC**, a Tennessee limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property located in Davidson County, Tennessee, commonly known as 1030 17th Avenue South, and is described in **Exhibit A** attached hereto and incorporated herein by this reference;

WHEREAS, a site plan for the Condominium prepared by Centric Architecture is attached hereto as part of collective **Exhibit B** and incorporated herein;

WHEREAS, the floor plans for the Condominium prepared by Centric Architecture is attached hereto as part of collective **Exhibit B** and incorporated herein;

WHEREAS, Declarant desires to subject the real property described in **Exhibit A** hereto, including the improvements thereon, to the provisions of this Declaration and to the Tennessee Condominium Act of 2008; and

NOW, THEREFORE, Declarant hereby declares that the real property described in **Exhibit A** of this Declaration, including the improvements located and to be located thereon, is hereby submitted and made subject to the form of ownership set forth in the Tennessee Condominium Act, and is hereby subjected to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the Tennessee Condominium Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth and/or described in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the real property subject to this Declaration, and shall be binding on all Persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors in title and assigns, and shall be for the benefit of all owners of the property subject to this Declaration.

Article I
NAME

The name of the condominium is Malvern, a Condominium (the "Condominium"), as further defined herein, which condominium is hereby submitted to the Tennessee Condominium Act of 2008.

Article II
DEFINITIONS

Generally, terms used in this Declaration, the Bylaws, and the Charter shall have their normal, generally accepted meanings or the meanings given in the Act or the Tennessee Nonprofit Corporation Act. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Charter shall be defined as follows:

1. "Act" shall mean the Tennessee Condominium Act of 2008, T.C.A. § 66-27-201, *et seq.*, as may be amended from time to time.

2. "Allocated Interests" shall mean the undivided interests in the Common Elements, the Common Expense liability, and the Votes in the Associate allocated to each Unit.

3. "Assessment" shall mean and refer to: (a) Annual Assessments, (b) Aligning Assessments, (c) Special Assessments, and (d) Specific Assessments, all of which are further defined and set forth herein. Assessment shall include all costs and reasonable attorney's fees incurred in the enforcement thereof and shall additionally include interest thereon.

4. "Association" shall mean Malvern Owners Association, Inc., a Tennessee nonprofit corporation, its successors or assigns.

5. "Board" or "Board of Directors" shall mean the board of directors of the Association, which shall be the body responsible for management and operation of the Association.

6. "Budget" shall mean and refer to a written, reasonably itemized estimate of the expenses to be incurred by the Association in the performance of its functions under this Declaration. A Budget will be prepared for each Assessment Year prior to the commencement thereof as further provided herein

7. "Building" shall mean that certain multi-level building located on the Condominium, as more particularly shown on the Site Plan and Floor Plans.

8. "Building Systems" shall mean all systems and facilities for water, air, ventilation, smoke evacuation, emergency generator, air conditioning and heating (including, without limitation, refrigerant lines, chilled water lines, electric lines, thermostatic control lines and related facilities), natural gas, steam, electricity, energy, drainage, sewage, communications, and other utilities and all chutes, flues, ducts, conduits, pipes, lines, utility meters, wiring and all similar components, or other conduit, raceways and other pathways relating to any of the foregoing (including, without limitation, closed circuit television lines, high speed internet lines and fiber optic cable lines). Property Monitoring and Access Systems shall be deemed Building Systems but Life-Safety Systems shall not be deemed Building Systems.

9. "Bylaws" shall mean the bylaws of the Association attached hereto as **Exhibit E** and incorporated herein by this reference.

10. "Charter" or "Articles of Incorporation" shall mean the Articles of Incorporation of Malvern Owners Association, Inc., which have been filed with the Secretary of State for the State of Tennessee, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference.

11. "Common Elements" shall mean those portions of the Submitted Property other than the Units, including specifically those shown on the Floor Plans as "Common Element."

12. "Common Expenses" shall mean actual or anticipated expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

13. "Common Profits" shall mean all income collected or accrued by or on behalf of the Association other than income derived from assessments.

14. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Submitted Property. Such standard may be more specifically determined by the Board and the Architectural Review Committee of the Association.

15. "Condominium" shall mean the condominium created under and pursuant to this Declaration.

16. "Condominium Instruments" shall mean this Declaration, all exhibits to this Declaration, and the Plat and Floor Plans, all as may be supplemented or amended from time to time.

17. "Declarant" shall mean **Malvern Music 17, LLC**, a Tennessee limited liability company, its successors and assigns and any other Person as further set forth in Section 66-27-203(10) of the Act, provided such successors and/or assigns are designated in writing by Declarant as a successor and/or assign of the rights of Declarant set forth herein. The expiration of the Declarant Control Period shall not terminate or alter the status of the above-referenced entity and its successors and assigns as Declarant hereunder or divest it of other rights specifically reserved to Declarant herein.

18. "Declarant Control Period" means that time period of time commencing on the date this Declaration is recorded in the Official Records and ending on the following date, whichever occurs first: (a) the date being the fifth (5th) anniversary after the conveyance of the first Unit to a purchaser other than the Declarant; (ii) the date being the one hundred twentieth (120th) day after the conveyance of seventy-five percent (75%) of the Units; (iii) the date determined by Declarant, as provided in a written notice to the Association; (iv) upon the date Declarant does not own any Unit in the Condominium; or (v) the date being the latest date permitted in the Act.

19. "Effective Date" shall mean the date on which this Declaration is recorded in the Official Records.

20. "Electronic Document" shall mean information created, transmitted, received or stored by electronic means and retrievable in human perceivable form, including, but not limited to e-mail, web pages, electronic documents, and facsimile transmissions.

21. "Electronic Signature" shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

22. "Environmental Laws" shall mean and include all present and future federal, state or local laws, rules orders ordinances and regulations pertaining to environmental regulation or the use, processing, storage disposal, generation or transportation of Hazardous Substances or any contamination, cleanup or disclosure related thereto, including, but not limited to, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. and such regulations as may be promulgated with respect thereto, including, but not limited to the regulations contained in 40 CFR Part 280.

23. "Floor Plans" shall mean the floor plans for the Condominium as required by Section 66-27-309 of the Act, and attached hereto as part of collective **Exhibit B** and incorporated herein.

24. "Governing Authorities" shall mean the Metropolitan Government of Nashville and Davidson County and any Department thereof, together with any other governing entity with jurisdiction over the Submitted Property.

25. "Governing Documents" shall collectively mean and refer to this Declaration and any applicable supplement thereto, amendment, the Bylaws and Charter of the Association, any architectural or design standards, fine schedule, and any use restrictions and/or Rules & Regulations, each as may be adopted, amended, and/or supplemented from time to time.

26. "Hazardous Substances" shall means those substances now or hereafter included within (whether as a result of such substance's inclusion on a list, physical characteristics or otherwise) any of the definitions of "hazardous substances", "hazardous waste", "hazardous materials", "pollutant", "contaminant" or "toxic substance" under or otherwise regulated by, any Environmental Laws; including, but not limited to (a) mixtures containing listed Hazardous Substances and waste generated from the treatment, storage or disposal of Hazardous Substances, (b) asbestos, (c) polychlorinated biphenyls, (d) radioactive materials and (e) petroleum (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas and synthetic gas.

27. "Legal Requirements" shall mean all applicable federal, state and local laws, orders, rules and regulations.

28. "Life-Safety Systems" shall mean those systems designed to protect the Building and its Occupants from emergencies, including, but not limited to, pumps, control valves, smoke alarms, horns, strobes, emergency lighting, smoke evacuation or exhaust systems, sprinklers (including stand pipes, fire pumps and control valves, foremen's control and enunciator panels and related facilities), call boxes, emergency generators and other related improvements, devices and equipment, and all utilities, wiring, sensors, service lines, or similar components connected thereto.

29. "Limited Common Element" shall mean a portion of the Common Elements reserved for the exclusive use of less than all Units.

30. "Majority" means more than fifty percent (50%) of the total eligible number.

31. "Member" shall mean and refer to any Person(s) that shall be an Owner of a Unit.

32. "Mortgage" shall mean any deed of trust, deed to secure debt, mortgage or other similar instrument filed in the Official Records that encumbers all or a portion of the Units as reflected in the Official Records.

33. "Mortgagee" or "Mortgage Holder" shall mean the holder of any Mortgage.

34. "Occupant" shall mean any Person, including any Owner of a Unit having a right to occupy or use all or any portion of a Unit for any period of time.

35. "Official Records" shall mean the official land records of the Register's Office for Davidson County, Tennessee.

36. "Owner" shall mean the record titleholder of a Unit, but shall not include a Person who is only a Mortgagee. A Mortgagee who forecloses or otherwise takes ownership of a Unit shall be deemed an Owner upon the acquisition of such ownership. The term "Owner" shall refer to the owner of a particular Unit and the term "Owners" shall refer collectively to the owners of all of the Units.

37. "Parking Areas" shall mean those certain Common Elements of the Condominium designated for parking and facilities related thereto, as shown on the Floor Plans, on a first-come, first-served based by users of the Parking Areas.

38. "Percentage Interests" shall mean the undivided ownership percentage interest in the Common Elements appurtenant to each Unit as set forth in **Exhibit C** to this Declaration.

39. "Permittee" shall mean any Occupant and any officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee, or contractor of an Owner, Occupant, Declarant, or Telecommunications Easement Holder, as applicable.

40. "Person" shall mean any individual, corporation, limited liability company, firm, association, partnership, trust or other legal entity.

41. "Plans" shall mean and refer to the detailed plans prepared for construction of any Improvement on or within the Submitted Property, which shall comply with the architectural control provisions of this Declaration.

42. "Plat" or "Site Plan" shall mean the plat or site plan for the Condominium required by Section 66-27-309 of the Act, attached hereto as part of collective **Exhibit B** and incorporated herein.

43. "Reserved Parking Areas" shall mean a Limited Common Element parking area or space in the Parking Areas allocated for exclusive use by the Owner or Permittee of a Unit, as more particularly shown on the Floor Plans, and not available to be used on a first-come, first-served based by users of the Parking Areas. The Reserved Parking Areas shall extend from the floor to ceiling. It is anticipated that "lifts" may be installed which allow for the stacking of vehicles. If an Owner desires to install a lift in that Owner's Reserved Parking Area, then the Owner shall make application with the Declarant and thereafter the Board, who shall approve or deny such application in its sole discretion. If approved, the cost of the installation, maintenance, repairs and/or replacement of the lift shall be the responsibility of the Owner of the Reserved Parking Area improved with such lift. The Association shall be responsible for the maintenance, repairs and/or replacement of the floor and ceiling of the parking garage the Reserved Parking Areas as well as any improvements below or above the finished surface of the floor or ceiling, as applicable.

44. "Secure Electronic Signature" shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

45. "Submitted Property" shall mean all that tract or parcel of land located in Nashville, Davidson County, Tennessee, commonly known as **1030 17th Avenue South**, and being more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.

46. "T.C.A." shall mean Tennessee Code Annotated, as amended from time to time.

47. "Unit" shall mean those portions of the Condominium intended for separate ownership. The square footage of each Unit is calculated per ANSI/BOMA Z65.4 Standards for Multi-Residential, as is further shown and illustrated on the Floor Plans Exhibit B attached hereto and incorporated herein.

48. "Vote" shall mean the vote in the affairs of the Association to which each Member is entitled, as further set forth herein, including votes attributable to Declarant.

49. "Voting Interest" shall mean the percentage Vote allocated to each Unit (based upon the Percentage Interest attributable to each such Unit) to which each Member is entitled, as further set forth herein, including the Voting Interest attributable to Declarant.

Article III
LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

Submitted Property. The Submitted Property subject to this Declaration and the Act is that certain tract or parcel of land located in Nashville, Davidson County, Tennessee, commonly known as **1030 17th Avenue South**, and being more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference. The Plat/Site Plan and Floor Plans attached hereto as collective **Exhibit B** are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

Article IV
UNITS AND BOUNDARIES

1. **Unit Description and Interests**. The Condominium shall be comprised of seven (7) residential Units and Common Elements and some of which may be allocated as Limited Common Elements. Each Unit consists of its defined space together with an undivided Percentage Interest in the Common Elements appurtenant thereto.

2. **Unit Boundaries**. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units shall have the following boundaries and are depicted on the Floor Plans:

a. Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be as follows:

i. Except as otherwise provided herein, the perimetrical or vertical boundaries of each Unit shall be the vertical plane formed by the innermost interior surface of the outermost exterior surface wall of the Building with any studs, drywall, sheetrock, gypsum board, paint, wallpaper and similar coverings being part of the Unit. For the purposes hereof, the "outermost exterior surface wall" shall mean the outermost wall of material comprising the facade of the Building, and which may be comprised of concrete block, pre-cast concrete panel, or other applicable materials.

ii. To the extent a Unit is bounded by the glass window wall system of the Building or other exterior glass windows or doors, the window wall system or other exterior glass windows or doors shall not be deemed part of the Unit, and the perimetrical or vertical boundaries of the Unit shall be the vertical plane formed by the innermost interior surface of the glass surface (with the glass itself and any window mullion not constituting part of the Unit, but shall be Common Elements).

iii. With respect to common walls between Units or between a Unit and Common Element interior improvements, the perimetrical or vertical boundary of the Unit served thereby shall be the centerline of such wall.

b. Horizontal Boundaries. The horizontal boundaries of each Unit shall be as follows:

i. Except as otherwise provided herein, the upper horizontal boundary of a Unit is the horizontal plane formed by the lowermost surface of the concrete slab above the ceiling of the Unit on the level on which the Unit is located, with the concrete slab above not constituting part of the Unit. The lower horizontal boundary shall be the horizontal plane formed by the uppermost surface of the concrete slab below the flooring of the Unit on the level on which the Unit is located, with the flooring constituting part of the Unit, but the concrete slab or foundation below the flooring of the Unit not constituting part of such Unit, but shall be Common Elements.

ii. Notwithstanding anything to the contrary herein, in the event a portion of a Unit is located on a level of the Building directly above another portion of the same Unit located on the level below, there shall not be deemed to be any horizontal boundary between the portions of the same Unit, but shall be Common Elements.

c. Additional Information to Interpret Unit Boundaries.

i. Except as may be otherwise provided for herein, the Unit boundaries shall exclude any portion of the Common Elements that may be located within such Unit's boundaries as described above.

ii. Any elevator (including, but not limited to elevator cab, elevator shafts, elevator pits, and all related mechanical and electrical rooms and/or systems) exclusively serving a Unit, as shown on the Floor Plans, shall be deemed part of such Unit.

iii. Any stairwell exclusively serving a Unit, as shown on the Floor Plans, shall be deemed part of such Unit.

iv. Any entry door (including exterior glass doors) and entry vestibules (if any) exclusively serving a Unit shall be deemed part of the Unit so served.

v. Those portions of the Building Systems (including any portion of the Building Systems located outside the boundaries of the Unit) that exclusively serve a single Unit shall be deemed part of the Unit.

vi. Any lighting (or signage, if applicable) attached to the exterior surface wall of the Building for the benefit of a particular Unit to the exclusion of other Units shall be Limited Common Elements attributable to such particular Unit or Units so benefitted, otherwise it will be deemed a Common Element.

vii. Those portions of the Life-safety Systems (including any portion of the Life-safety Systems located outside the boundaries of the Unit) that exclusively serve a single Unit shall be deemed part of the Unit.

viii. Structural columns that support more than one (1) Unit shall not be part of any Unit, but shall be Common Elements.

ix. The Parking Areas are not included in the boundaries of a Unit. As shown on the Floor Plans, some Parking Areas shall be Common Elements and some Parking Areas shall be Reserved Parking Areas and are allocated as Limited Common Elements attributable to a particular Unit.

d. Each Unit Owner shall be responsible at its sole cost for the maintenance, repair and replacement of any element deemed a part of the Owner's Unit. If the element is deemed shared with another Unit Owner, the Owners shall share the cost for maintenance, repair and replacement. If the owners disagree as to the time, cost or work, either owner shall have a self-help remedy. In all events, disagreements between Unit Owners may be resolved by the Board, whose decision shall be final.

In the event that there is a conflict between the boundaries of a Unit as described in this Article and as shown on the Floor Plans, the Floor Plans shall control. It is the express intent of Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitute a lawfully described "Unit" as that term is defined in Section 66-27-203(23) of the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "Unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a properly described Unit under the Act) and shall thereafter be deemed to be Limited Common Elements reserved to the exclusive use of said Unit, subject to the rights and obligations of other Unit Owners with respect to said property.

Article V
COMMON ELEMENTS

1. The Common Elements consist of all portions of the Condominium not constituting a part of a Unit. The Common Elements shall include, without limitation:

a. all items identified as Common Elements on the Floor Plans;

b. roof of the Building;

c. footings, foundations, and sub-flooring of the Building;

d. structural columns that support more than one (1) Unit and/or Common Elements;

e. mechanical, generator, fire control, sprinkler, or fire/domestic water pump rooms;

f. exhaust and ventilation shafts and fresh air intake valves;

g. elevators and elevator lobbies serving more than one (1) Unit;

h. Life-safety Systems serving the Common Elements or more than one (1) Unit;

i. Building Systems serving the Common Elements or more than one (1) Unit;

j. Dumpsters/trash facilities serving Common Elements or more than one (1) Unit;

k. Parking Areas (excluding Reserved Parking Areas);

l. walkways; sidewalks, paved areas, exterior landscaping, storm water detention facilities and/or retaining walls (if any); and

m. driveway(s). A portion of the Submitted Property is affected by a shared drive. The underlying real property is Common Element, and in the event the shared drive is ever abandoned or terminated, the real property previously affected by the shared drive shall remain Common Element. Such abandonment or termination may require the approval or consent of all of the parties served by the shared drive.

Notwithstanding any provision to the contrary stated herein, any door or doors enclosing any of the above-listed rooms or serving more than one (1) Unit shall be deemed a part of the Common Elements.

2. Ownership of the Common Elements shall be by the Owners as tenants-in-common. Each Owner shall own an undivided Percentage Interest in and to the Common Elements attributable to the Unit owned by such Owner. The undivided Percentage Interest attributable to each Unit is set forth in **Exhibit C**. Such undivided Percentage Interest ownership may be altered only by the consent of all Owners and their respective Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, except as otherwise provided herein.

The Common Elements shall remain undivided, and no Unit Owner or any other person shall bring any action for partition or division of the whole or any part thereof, except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Unit Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Unit Owners.

Article VI
LIMITED COMMON ELEMENTS

1. The Limited Common Elements located on the Submitted Property and the Unit or Units to which they are allocated are depicted on the Floor Plans and are further described as follows:

a. Reserved Parking Spaces;

b. portions of the Life-safety Systems serving one (1) or more but less than all Units (allocated proportionally to the Unit or Units so served);

c. any Building System, or portion thereof, serving more than one (1) Unit but not all Units (allocated proportionally to the Unit or Units so served);

d. any utility meter serving exclusively serving a particular Unit (allocated to the Unit or served);

e. any portions of the Common Elements on which there is located any portion of the air conditioning, heating, plumbing, ventilating, exhaust, mechanical, electrical, elevator or telecommunication systems exclusively serving a particular Unit (allocated to the Unit so served). Notwithstanding anything to the contrary stated herein, the Association may, at its sole expense and without need for a Vote of the Members, but subject to the written consent of any affected

Unit Owner (which consent shall not be unreasonably withheld, conditioned or delayed), relocate any air conditioning, heating, plumbing, ventilating, exhaust, electrical or telecommunication systems or portion thereof serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation; and further provided that if the relocation is to primarily benefit one Owner and not the Condominium as a whole, the cost of the relocation shall be specially assessed against the benefitting Owner;

2. The Board of Directors is hereby authorized to allocate and to reallocate Limited Common Elements and Common Elements not previously allocated, provided that any such allocation or reallocation shall be made in accordance with the provisions of the Act and this Declaration. A Common Element not previously allocated as a Limited Common Element may be so allocated upon written application to the Association by the Unit Owner or Unit Owners for whose exclusive use such Common Element is requested; provided, however, no such assignment shall be approved by the Board of Directors which would materially impair the rights of the other Unit Owners under this Declaration. A Limited Common Element may only be reallocated by the Board upon written application to the Association and written consent by the Unit Owner or Unit Owners to whose Unit the Limited Common Element appertains and the Unit Owner or Unit Owners to whose Unit the Limited Common Element is being reallocated. Upon such application and such approval by the Board, the Association shall prepare and execute an amendment to this Declaration assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be consented to and executed by the Unit Owner or Unit Owners making such application. A Limited Common Element allocated to a Unit may not be reallocated by the Board without the prior written consent of the Unit Owner of the Unit to which such Limited Common Element is allocated.

Article VII
ASSOCIATION MEMBERSHIP AND VOTING INTEREST

All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit, excluding Persons holding such interest under a Mortgage, are members of the Association, and except as otherwise provided herein or in the Bylaws, shall be entitled to Vote on all matters upon which Members of the Association are entitled to Vote pursuant to this Declaration and in accordance with the Bylaws. Subject to the provisions of this Declaration and the By-Laws, the Owner of each Unit shall be entitled to exercise the Voting Interest for each Unit as set forth in **Exhibit C** attached hereto and incorporated herein.

Article VIII
ALLOCATION OF LIABILITY FOR COMMON EXPENSES

1. Except as provided below or elsewhere in the Act, this Declaration, or the Governing Documents, the amount of all Common Expenses shall be assessed against all the Units in accordance with their Percentage Interest in the Common Elements appurtenant to the Unit as set forth in **Exhibit C**.

2. The Board shall have the power to levy special assessments against the Units pursuant to this Section and the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

a. Any Common Expenses significantly and disproportionately benefiting one (1) or more Units (including, but not limited to, Common Expenses associated with the maintenance, repair, renovation, restoration, or replacement of any Limited Common Element) shall be specially assessed equitably, in the Board's reasonable discretion, among all of the benefited Units according to the respective benefit received; provided, any such equitable assessment allocation shall be supported by measurable, objective criteria (e.g., invoices or other objective post analysis showing relative usage of services or facilities by the Units).

b. Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Permittees of any such Unit or Units may be specially assessed by the Board against such Unit or Units based upon the conduct committed.

3. **Commonly Metered-Used Items**. The Owners acknowledge that some utility services on the Submitted Property may be metered to one (1) Owner and may benefit another Owner. Except where expressly provided to the contrary herein, the Owner being metered shall have the right, at any time, at its cost, to have an engineer or other consultant reasonably acceptable to the other Owner analyze the typical amount of usage allocable to the other Owner. The Owner being metered may invoice the other Owner for the costs of utility service allocable to the other Owner (based on such typical amount of usage and the rates being charged by the-applicable utility companies to the metered Owner). An Owner shall have the right to install sub-meter, at its cost, and shall also have the right to at any time, at its cost, to take such steps as may be required to connect the items served by the other Owner's utility meters to its own utility meters or to install separate components that serve solely its Unit and disconnect its Unit from components operated, maintained, repaired and replaced by the other Owner. In the absence of any of the foregoing, each Owner shall pay for all utility service metered to it and for the costs of operating, maintaining, repairing and replacing such components in a manner so that there will be no disruption of service to the other Owner.

Article IX
ASSOCIATION RIGHTS AND RESTRICTIONS

1. **Rights and Authority**. In addition to and not in limitation of all other rights it may have, the Association, acting through its Board, shall have the right and authority:

a. to enter into Units for maintenance, emergency or life-safety purposes, which right may be exercised by the Board, officers, agents, employees, managers and all police officers, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the affected Unit Owner or Occupant. For the purposes of this Section, an emergency justifying immediate entry into Units shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this Section shall be liable for trespass, damages or in any other manner by virtue of exercising such rights, except as provided in the Act. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that the Association, acting through its Board, shall have no duty or obligation to enter Units;

b. to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Common Elements and Limited Common Elements;

c. to enforce use restrictions, provisions contained within the Declaration and Bylaws, and rules and regulations promulgated and adopted by the Association by the imposition of reasonable monetary fines and the suspension of use privileges as provided in Section 66-27-402 of the Act;

d. to grant and accept permits, licenses, utility easements, leases and other easements;

e. to control, manage, operate, maintain, improve and replace all portions of the Common Elements;

f. to represent and act on behalf of the Unit Owners in the event of damage or destruction as a result of casualty loss in accordance with the provisions of the Act and this Declaration;

g. to represent and act on behalf of the Unit Owners in the event of any loss resulting from condemnation or eminent domain in accordance with the provisions of the Act and this Declaration;

h. to acquire, hold and dispose of tangible and intangible personal property and real property;

i. to approve contractors or subcontractors who have access to the Submitted Property for the purpose of making repairs or improvements to the exterior façade of the Building, any Common Elements, or any structural components of the Building based on rules and regulations promulgated and adopted by the Board, which may include, without limitation: financial stability of the contractors and/or subcontractors; history of compliance with this Declaration and the Governing Documents; and other factors that may be reflective of quality and ability;

j. to impose insurance requirements and collect other non-refundable fees for use of the loading docks and trash receptacles;

k. to display holiday decorations on the Submitted Property, except no holiday decoration shall be displayed on a Limited Common Element without the written consent of the Owner or Owners of the Unit to which such Limited Common Element is assigned, and no holiday decoration shall be displayed in a Unit without the prior written consent of the Owner of such Unit;

l. to close temporarily any portion of the Common Elements (excluding the Limited Common Elements or any closure that would materially interfere with the business operations of a Unit, or the use of which is reasonably necessary for access to or from a Unit) with thirty (30) days prior notice to all Unit Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing;

m. to maintain, improve, repair, and replace any sidewalks, landscaping, or other improvements located on government owned property adjacent to the Condominiums, subject to compliance with applicable Legal Requirements and with a minimum of interference to the retail businesses using such sidewalks; and

n. to enter into joint agreements and contracts with other Unit Owners for the provision of services, including, without limitation, management, landscaping, porter, utilities, amenities, concierge and property monitoring services.

2. **Standard of Conduct**. In the exercise of its rights hereunder, the Association, acting through the Board, shall act at all times in good faith and in a commercially reasonable manner.

Article X
ASSESSMENTS

1. **Authority and Purpose**. The Association shall have the power to levy assessments as provided herein. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Units as may be more specifically authorized from time to time by the Board.

2. **Types of Assessments**. Each Owner of a Unit, by acceptance of a deed to a Unit whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following types of assessments with such assessments to be established and collected as hereinafter provided: (a) Annual Assessments, (b) Aligning Assessments, (c) Special Assessments; and (d) Specific Assessments.

a. "Annual Assessment" shall mean the assessment to be uniformly levied by the Board against each Unit.

b. "Aligning Assessment" shall mean and refer to the Board's power to levy special assessments against a Unit(s) in connection with Common Expenses that significantly and disproportionately benefit such Unit(s) in relation to other Units and/or in connection with Common Expenses occasioned by the conduct of particular Owners and/or their Permittees (as further set forth herein above).

c. "Special Assessment" shall mean an assessment uniformly levied by the Board against all Units in accordance with their respective Percentage Interests to fund an expense of the Association not included in the annual budget or to otherwise fund a shortfall in the operating account of the Association. The Board shall send written notice of any Special Assessment to all Owners. In addition to the other information required to be set forth in Assessment notices, a Special Assessment notice shall state the purpose of the Special Assessment.

d. "Specific Assessment" shall mean an assessment levied by the Board against a Unit as permitted in the Act and as provided below:

i. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be specifically assessed against the Unit(s) to which that Limited Common Element is allocated equitably, in the Board's reasonable discretion;

ii. Any Common Expense or portion of the Common Expense benefiting fewer than all of the Units may be specifically assessed exclusively against the Units so benefited;

iii. Costs of insurance may be specifically assessed in proportion to risk and the factors furth described herein;

iv. Costs of any common utilities shall be specifically assessed in proportion to usage;

v. If any Common Expense is caused by the misconduct of any Unit Owner, the Association may specifically assess that expense exclusively against that Owner's Unit; and

vi. Fines and other charges assessed against less than all the Units shall be deemed Specific Assessments.

vii. The Board shall send written notice of any Specific Assessment to the Owner of the Unit(s) that are the subject of such Specific Assessment, and the notice shall state the purpose of the Specific Assessment.

e. Except as otherwise provided herein below in connection with Declarant, no Owner may exempt himself or herself from liability for or otherwise withhold payment of Assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to perform its obligations required hereunder or an inconvenience or discomfort arising from the Association's performance of its duties. Notwithstanding anything to the contrary stated herein, Declarant shall have no obligation to fund budgetary deficits of the Association.

3. **Assessment Notice**. Notice of any Assessment set forth herein shall be sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, facsimile transmission, or electronic transmission at the address or other contact information provided to the Board by the Owner for notices provided herein or in the event no separate address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Unit. Such notice shall state the type of Assessment being levied, the amount to be paid, payment frequency (annual, quarterly, monthly, or as otherwise set by the Board), and the payment due date(s), as well as any other required information. Notices will be given to Owners in a reasonable period of time prior to the payment or first installment due date.

4. **Lien Creation and Personal Obligation for Assessments**. Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments as hereinafter provided. All such assessments, together with charges, interest, posts and reasonable attorneys' fees actually incurred and, if the Board so elects, an assignment of rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. All such assessments shall be subordinate to liens of ad valorem taxes and liens for all sums unpaid under a first Mortgage. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The lien provided for herein shall have priority as provided in the Act.

5. **Computation of Operating Budget**. For each fiscal year, the Board shall prepare a budget listing by category the estimated Common Expenses (including the establishment and maintenance of such reserves as the Board may consider appropriate) for such year. The Board shall cause the proposed annual budget to be delivered to each Owner at the last address furnished to the secretary of the Association by the Owners.

a. Changes in Budget. The Board shall have the right to: (i) not spend the full amount budgeted for any particular line item in the Budget; (ii) spend more than what has been budgeted for any particular line item in the Budget, and (iii) shift revenues within the Budget from one line to another. Notwithstanding anything to the contrary stated herein, during the Declarant Control Period, Declarant or Declarant-appointed Board members shall be authorized to unilaterally reduce or increase the amount of the Annual Assessments owed on the Units without the necessity of a Vote of the Owners to reflect cost increases or cost savings that were not contemplated at the time the initial estimated operating Budget for the Association was developed.

b. Failure to Establish Budget. Notwithstanding the foregoing, in the event the proposed Budget is not approved or the Board fails for any reason to determine the Budget for the succeeding year, then and until such time as a Budget shall have been determined as provided herein, the Budget in effect for the then current year shall continue for the succeeding year; provided, however, the Budget shall be one hundred and five percent (105%) of the preceding year's amount.

6. **Capital Reserve Budget and Contribution**. The Board shall annually prepare a capital reserve budget, which may take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the Budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the Budget and the Annual Assessment. All capital reserve contributions related to those assets that are maintained by the Association and such related costs specifically assessed in accordance with the percentage share attributable to each Unit as set forth in **Exhibit C** shall be also be specially assessed in accordance with the percentage share attributable to each Unit as set forth in **Exhibit C**. A copy of the capital reserve budget shall be distributed to each Member in the same manner as the operating Budget.

7. **Delinquent Assessments**. Any Assessment and related charges that are, due to the Association pursuant to this Declaration, or any portion thereof, that is not paid when due shall be delinquent, and the Owner shall be in default. If any Assessment, any related charges or any portion thereof is not paid in full by the tenth (10th) day after the due date, a late charge equal to ten percent (10%) of the amount not paid (or such higher amounts as may be authorized by the Act) may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum (or such higher rate as may be permitted by the Act) shall accrue from the due date. If part payment of the Assessment and/or related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent Assessments and then to current Assessments. If any Assessment, any related charges or any portion thereof remains delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the Assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the Annual Assessment for the then-current fiscal year and of any Special Assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall be obligated to pay the entire amount so accelerated.

8. **Action to Collect Assessments**. If Assessments and other charges or any portion thereof remain unpaid for more than thirty (30) days after the Assessment payment first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due

pursuant to the provisions of this Declaration, the Governing Documents, the Act, and Tennessee law, including reasonable attorneys' fees actually incurred; provided, however, the Association shall provide at least ten (10) days advance written notice to the applicable Mortgagee describing the Association's intent to file suit against the Owner of a Unit subject to such Mortgagee's Mortgage. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions. The equitable charge and lien provided for in this Section shall be in favor of the Association for the use and benefit of all Owners. Each Owner, by its acceptance of a deed to a Unit, vests in the Association or its agents the right and power to sue or otherwise proceed against such Owner for the collection of such charges and/or to foreclose such liens. The Association shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

9. **Statement of Account**. Any owner, Mortgagee or a Person having executed a contract for the purchase of a Unit or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines or other charges against a Unit. The Association shall respond in writing within ten (10) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

10. **Surplus Funds and Common Profits**.

a. Subject to the provision of the Act, Common Profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such Common Profits to the payment of Common Expenses shall, at the option of the Board, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the Percentage Interest attributable to each Unit or added to the Association's capital reserve account.

b. If the Board reasonably determines that during a fiscal year there will likely be a surplus of Assessments paid by an Owner at the end of such fiscal year (excluding amounts designated for reserves), the Board may, but shall not be required to, reduce the amount of the Assessments to be collected from such Owner for the remainder of that fiscal year. Any Owner who has already paid such Owner's entire Assessment obligation for the fiscal year at the time of such reduction shall, in the discretion of the Owner, either receive a refund of the overpayment or a credit of the amount of the overpayment towards the Owner's Assessment obligation to the Association for the following fiscal year. Notwithstanding the above, the Association may first apply the amount of any overpayment toward any other amount the Owner may owe to the Association.

11. **Assessment Exemption Period**. Notwithstanding anything to the contrary stated herein, Declarant shall be excused from the payment of Assessments to the extent permitted by the Act for a period (the "Assessment Exemption Period") commencing on the date the Declaration is recorded in the Official Records and ending on the following date, whichever occurs first; (i) the date being the fifth (5^{th}) anniversary after the conveyance of the first Unit to a purchaser other than the Declarant; (ii) the date being the one hundred twentieth (120^{th}) day after the conveyance of seventy-five percent (75%) of the Units; (iii) the date determined by Declarant, as provided in a written notice to the Association; (iv) upon the date Declarant does not own any Unit in the Condominium; or (v) the date being the latest date permitted in the Act. During the Assessment Exemption Period, as to the portion of assessments assessed pursuant to Section 66-27-414(b) of the Act, Declarant shall pay all Common Expenses incurred by the Association during the Assessment Exemption Period that exceed the amounts assessed

against other Owners. Additionally, during the Assessment Exemption Period; (x) no capital contributions, start-up funds, initiation fees, or contributions to capital reserve accounts that are receivable from Unit purchasers or Owners and payable to the Association at closing may be used for payment of Common Expenses; (y) no portion of the payment of Assessments collected from Owners intended to be utilized for or reserved for deferred maintenance, reserves for depreciation, or other reserves, as shown on the operating Budget for the Condominium may be used for payment of Common Expenses; and (z) no prepayments of Assessments made by Owners shall be used for the payment of Common Expenses prior to the time the Assessments would otherwise by due.

Article XI
INSURANCE

1. **Generally**. The Association, acting through the Board, shall obtain as a Common Expense and maintain at all times, insurance which meets or exceeds the insurance requirements for condominium associations set forth in Section 66-27-413 of the Act, as amended. This insurance may consist of one or more stand alone policies obtained by the Association or a master or group insurance policy or program available to a Unit Owner provided that such policy or program meets or exceeds the requirements set forth in this Article.

2. **Subrogation Waiver**. Notwithstanding anything to the contrary set forth herein, the Association and each Owner hereby waives any and all claims against one another for damage to or destruction of real or personal property to the extent such damage or destruction is covered by a then existing policy of property insurance (whether fire and extended coverage, so called "all risk" property coverage, so called "causes of loss-special form" property coverage or any other property/casualty policy). Further, the Owner whose property is damaged shall also be responsible for the payment of any deductible amounts allocated to it herein in connection with any property damage so covered by insurance, except as otherwise provided below. The intent of this provision is that each Owner shall look solely to the available insurance with respect to property damage or destruction. The Board and the Owners shall use commercially reasonable efforts to cause each insurance carrier providing property coverage as aforesaid to waive subrogation against all parties as further set forth herein below with respect to any property damage so covered. Any indemnities set forth in this Declaration shall be deemed to be subject and subordinate to the waivers set forth in this Section.

3. **Property Insurance Obtained by the Association.**

a. Scope of Property Coverage. Notwithstanding the minimum insurance requirements of the Act, the Board shall utilize commercially reasonable efforts to secure property insurance coverage as is reasonably available from time to time and used with respect to property located in **Davidson County**, Tennessee, which is of a similar size and which has a similar use and occupancy, insuring against perils commonly insured by the industry standard form of property insurance which, as of the Effective Date, is known as "causes of loss-special form," in an amount equal to the full insurable replacement cost, before application of deductibles (including coverage for demolition cost end increased cost of construction in amounts determined by the Board), of the "Areas of Insurance Responsibility." If coverage on a "causes of loss special form" is not available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. Subject to the provision of this Declaration, the Association may additionally obtain such other property insurance as the Association may determine to be necessary or desirable

i. As used in this Declaration, "Areas of Insurance Responsibility" shall mean all of the items that the Association is required to insure by Section 66-27-413(a) of the

Act, the Common Elements (including the Limited Common Elements), all real and personal property owned by the Association (including but not limited to any common furniture and equipment and fixed asset supplies and contents) and as it is applied to the Units: (A) the HVAC system serving the Units, (B) Sheetrock and plaster board comprising the walls and ceilings of the Units, and (C) all Improvements and betterments installed in the Units as of the Effective Date (and replacements thereof to the value as of the event of a casualty of those Improvements and betterments installed as of the Effective Date) (including all floors and subfloors; wall, ceiling, and floor coverings, plumbing and electrical lines and fixtures; built-in cabinetry and fixtures; and appliances for refrigeration, cooking, dishwashing, and laundry).

ii. The "Areas of Insurance Responsibility" shall exclude: all Improvements and betterments made to a Unit subsequent to the Effective Date (except for replacements as described above in this Subsection and furnishings and other personal property within a Unit. If coverage on a "causes of loss special form" is not available at a reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. Subject to the provisions of this Declaration, the Association may additionally obtain such other property insurance as the Association may determine to be necessary or desirable.

iii. Notwithstanding any provision to the contrary contained herein, any Owner may request in writing, that the Association obtain property insurance for that Unit in excess of the requirements provided for above or to reflect changes or alterations to the Unit. The Association can elect to obtain or not obtain such insurance after evaluating whether it can obtain such insurance at a commercially reasonable cost, the increased risks to the Association, if any, of obtaining the insurance, the extent to which obtaining the requested insurance will create administrative or financial burdens, if any, for the Association and whether the insurance would be more logically obtained directly by an Owner. If the Association elects to obtain such additional insurance pursuant to a request from an Owner, the Areas of Insurance Responsibility shall also include the Unit for which the Association has elected to obtain insurance. Prior to the Association's binding such requested additional insurance, the requesting Owner shall have the right to review and approve the scope of such requested additional insurance, the deductible for such requested insurance, and other material terms and conditions of such requested insurance. Moreover, in the event that an Owner requesting additional insurance hereunder desires not to renew or desires to cancel the requested insurance, such Owner shall provide written notice to the Board.

iv. In the event of any subsequent changes or alterations to structures that are Common Elements or other portions of Condominium for which the Association is responsible to maintain, the Association shall utilize commercially reasonable efforts to bind the Association's carrier to provide property insurance adequately covering the changed or altered structures.

v. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

b. Beneficiaries of property insurance. All property insurance obtained by the Association pursuant to this Declaration shall designate the Association as the named insured,

individually and as agent for the Owners collectively, without naming them individually, and as agent for their respective Mortgagees (except not as agent for a Mortgagee of a Unit where the Mortgage do not permit and the Owner of the applicable Unit provides written evidence of such to the Association.

c. Liability insurance obtained by the Association. The Association, acting through the Board, shall obtain commercial general liability insurance in amounts not less than the minimum required by the Act. The coverage required under this Subsection may be obtained pursuant to any combination of primary, excess, and umbrella policies. The general liability policy or policies shall cover occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Common Elements and other portions of the Condominium which the Association has the responsibility to maintain. The commercial general liability insurance shall contain a cross liability endorsement, and the Board shall use commercially reasonable efforts to obtain a waiver of subrogation applying to all parties as set forth herein below.

d. Beneficiaries of Liability Insurance. All liability insurance obtained by the Association pursuant to this Declaration shall cover the Association and the officers, agents and employees of the Association, the Owners and their respective Mortgagees. The Association shall be designated as the named insured, individually and as agent for the Owners collectively, without naming them individually, and as agent for their respective Mortgagees (except not as agent for a Mortgagee of a Unit where the Mortgage do not permit and the Owner of the applicable Unit provides written evidence of such to the Association.

e. Coverage Requirements. The Board shall use commercially reasonable efforts to obtain policies that will provide the following:

i. the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent for the Association and the Owners;

ii. any "other insurance" clause contained in the Association's insurance policies shall expressly exclude individual Owners' policies from its operation;

iii. the Association's policy shall be endorsed as primary and non-contributory with regard to Unit Owners;

iv. until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board, or any of their agents, employees, or Permittees, nor be canceled for nonpayment of premiums;

v. the policies may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board, the Owners, and all Mortgagees;

vi. an agreed value endorsement in the Association's property insurance policy waiving co-insurance limitations; and

vii. Nothing contained herein gives any Owner or other Person a priority over any rights of Mortgagees as to distribution of insurance proceeds. Any insurance

proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee (except where the Mortgage for a Unit requires otherwise and the Owner of the applicable Unit provides written evidence of such to the Association). This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

f. Other Required Insurance. In addition to the insurance required hereinabove, the Association shall obtain as a Common Expense the insurance set forth below, which insurance will be allocated to each Unit in accordance with the Percentage Interest in the Common Elements appurtenant to the Unit as set forth on **Exhibit C** hereto:

i. worker's compensation insurance if and to the extent necessary to meet the requirements of law;

ii. officers' and directors' liability insurance in such amounts as the Association may determine; and

iii. fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if commercially reasonably available, shall be in an amount consistent with the business judgment of the Board, but in no event less than three (3) months' Assessments plus a reasonable amount to cover all or reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (A) the Association or management company of the Association, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (B) the management company of the Association, if any, maintains separate records and bank accounts for each association that uses its services and the management company of the Association does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (C) two (2) members of the Board must sign any checks written on the reserve account. The Board may authorize online payments with the financial controls as set out herein.

g. Adjustment Authority. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

h. Annual Review and Allocation of Costs Between Units. The Board shall at least once every year, conduct an insurance review to determine if the policy or policies in force are adequate to meet the needs of the Association (including taking into consideration insurance carried on similar projects in **Davidson County**, Tennessee) and to satisfy the minimum requirements of the Act. The Board shall be deemed to have fulfilled such responsibility by reasonably relying upon verification from the Association's insurance agent or insurance underwriter that the insurance policies in existence meet the needs of the Association and, satisfy the minimum requirements of the Act. The property and liability insurance obtained by the Association will disproportionately benefit the different Units due to the scope and nature of: (i) the uses of each of the Units; (ii) the differing nature of insurance risk associated with the use of each Unit; (iii) the-type and cost of the structural improvements and betterments within each Unit;

(iv) the size of each Unit; (v) any additional insurance or coverages benefiting less than all of the Units; and (vi) any other factors which the agent or underwriter reasonably determines would affect the equitable allocation of the costs of the insurance policies. Therefore, the Association shall consult with an agent for the insurance provider familiar with allocating the costs of property and liability insurance in mixed-use communities to equitably allocate the cost of the property and liability insurance policies being obtained by the Association between the different Units based on the factors referenced above. The Board shall then disproportionately assess the cost of this insurance against the different Units consistent with the recommendations of the insurance agent.

4. **Insurance Maintained by Owners.**

a. Property Insurance. Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of its Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a certificate of insurance to the Association.

b. Water Damage. The Owner of each Unit shall be required to obtain and maintain at all times, if commercially reasonably available, through the Association, insurance for water damage resulting from the discharge of water from such Unit into any Unit located vertically below or horizontally adjacent to such Unit. The cost of such supplemental insurance coverage shall be assessed by the Association against each Owner as a Special Assessment. In addition, each Owner shall indemnify, defend, and hold harmless the other Owners from and against any and all loss, damage, liability, cost or expense arising out of or relating to water damage resulting from the discharge of water from the indemnifying Owner's Unit into the other Units, to the extent that such loss, damage, liability, cost or expense is not paid for out of insurance proceeds received by such other Owner(s) or the Association. This indemnification obligation shall extend to any insurance deductible paid by an Owner as part of the adjustment of any insured claims covering any of the foregoing items.

c. Property Monitoring Services. The Owner or Occupant of any portion of a Unit who has hired a property monitoring service for part or all of such Unit shall require such property monitoring service to keep in force, at all times, such commercial general liability insurance policies issued by responsible insurance companies licensed or authorized to do business in the State of Tennessee as will protect the Association, the Board and officers of the Association from and against claims of any and all persons for personal injury, death or property damage or loss occurring in connection with the operation of such property monitoring service. Such insurance shall have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Two Million Dollars ($2,000,000) per occurrence and in the aggregate. The required insurance limits can include a combination of primary and excess insurance policies.

d. Failure to Obtain. In the event that any Owner fails to obtain insurance as required by this Section and provide evidence of same within five (5) business days of the receipt of request for same by the Association, then the Association may purchase such insurance on behalf of the Owner and specially assess the cost thereof to the Owner, to be collected in the manner provided for collection of Assessments hereunder.

e. Coverage Requirements. If commercially reasonably available, the insurance required pursuant to this Section shall: (i) provide that the policy may not be canceled or reduced in amount or coverage below the requirements hereof, without at least thirty (30) days prior written notice by the insurer to the insured and to the additional insured and their respective Mortgagees;

(ii) provide for severability of interests; (iii) provide that an unintentional act or omission of the insured or the additional insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insured or their Mortgagees; and (iv) name the Association and the other Owners as an additional insured. All relevant Owners to whom this Section applies shall furnish the Association within five (5) days of the receipt of request by the Association a certificate affirming that such insurance is in full force and effect, that the premiums have been paid in full, and that each of the provisions listed herein is included in the policy.

5. **Application of Deductibles**. Except as set forth below, all insurance deductibles for insurance maintained by the Association shall be deemed to be Common Expenses. In the event of an insured loss, any required deductible for a policy maintained by the Association shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such expense in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the insurer among the Persons suffering loss in proportion to each affected Owner's portion of the total cost of reconstruction and repair. Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to its Unit, if any. If any Owner(s) fail to pay the deductible when required under this Section, then the Association may pay the deductible and specially assess its cost to the Owner or Owners; provided, however, where the deductible is for insurance as required by Section 67-27-413 of the Act, no Owner shall be specially assessed more than the costs of the deductible for any one (1) occurrence. For the purposes of illustration, if a loss occurs solely within a Unit, the Owner of such Unit shall be solely responsible of the cost of the deductible; provided, however, where the deductible is for insurance as required by Section 67-27-413 of the Act, such Owner shall not be specially assessed more than Two Thousand Five Hundred Dollars ($2,500), or such higher amount as authorized by the Act.

6. **Distribution of Proceeds**. Proceeds of insurance policies received by the Insurance Trustee shall be distributed so or for the benefit of the beneficial owners thereof in the following manner:

a. Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to each Owner, by check made payable jointly to such Owner and their respective Mortgagee(s), if any. If there is no Mortgage on the Unit, all distributions shall be made directly to the Owner.

b. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired as provided herein, the remaining proceeds shall be allocated among distributed to each Owner by check made payable jointly to such Owner and their respective Mortgagee(s), if any. If there is no Mortgage on the Unit, all distributions shall be made directly to the Owner.

c. Certificate. In making distributions to Owners and their Mortgagees, the payor of same may rely upon a certificate of the Association made by its President and Secretary as to the names of the Owners and their Mortgagees, if any, and their respective shares of the distribution.

7. **Requirement for All Insurance Policies**. All policies of insurance required by this Declaration shall be written with an insurance company licensed or authorized to do business in the State of Tennessee with a Best's Financial Strength Rating of at least A- and Best's Financial Size Category of at least VIII (or other comparable ratings in the event A.M. Best Company, or its successor, ceases to provide such ratings).

Article XII
REPAIR AND RECONSTRUCTION

1. In the event of damage to or destruction of all or any part of the Submitted Property as a result of fire or other casualty, unless the Board of the Association and one hundred percent (100%) of the Owners, including the Owner or Owners of any damaged Unit or Units, Vote not to proceed with the reconstruction and repair of the Submitted Property, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the Submitted Property and Condominium thereon. In the event of substantial damage or destruction, each Mortgagee of any damaged Unit shall be entitled to written notice of the damage and nothing in the Condominium Instruments shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

2. **Cost Estimates**. Promptly after a fire or other casualty causing damage to the Submitted Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the Submitted Property (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

3. **Source and Allocation of Proceeds**. In the event that the net insurance proceeds (i.e. the remainder obtained by subtracting the property insurance policy insurance proceeds actually and unconditionally received by or on behalf of the Association) from the total amount of the "hard" and "soft" costs required to restore, replace or repair the damage or destruction resulting from an insured loss with respect to all or any portion of the Submitted Property) made available for reconstruction or repair are insufficient to satisfy all of the costs and expenses of reconstruction and repair, each of the Owners, to the extent the Owners have an interest in the Submitted Property affected by casualty, shall pay, and shall be obligated for, its applicable "Insurance Shortfall Payment." The Insurance Shortfall Payment shall be calculated as follows:

a. in the event that the damage and/or destruction from the casualty affects only one (1) Unit, the Insurance Shortfall Payment shall be assessed as a Specific Assessment against the Owner of the Unit that is affected exclusively and solely by the casualty damage and/or destruction;

b. in the event that the damage and/or destruction from the casualty affects more than one (1) Unit, the Insurance Shortfall Payment shall be assessed as a Specific Assessment against the Owners of the Units that are affected by the casualty damage and/or destruction in proportion to each affected Owner's portion of the total cost of reconstruction and repair as allocated by the insurer or the Board in its sole discretion;

c. in the event that the damage and/or destruction from the casualty affects a Limited Common Element allocated to only one (1) Unit, the Insurance Shortfall Payment shall be assessed as a Specific Assessment against the Owner of the Unit to which such Limited Common Element is allocated;

d. in the event that the damage and/or destruction from the casualty affects a Limited Common Element allocated to more than one (1) Unit, the Insurance Shortfall Payment shall be assessed as a Specific Assessment against the Owners of the Units to which the Limited Common Element is allocated in proportion to each affected Owner's portion of the total cost of reconstruction and repair as allocated by the insurer; and

e. in the event that the damage and/or destruction from the casualty affects the Common Elements (other than Limited Common Elements), the Insurance Shortfall Payment shall be assessed against all the Owners in accordance with the Percentage Interests.

f. Aside from its obligation to pay assessments for the Units that it owns, Declarant shall have no obligation to fund any deficit arising from insufficiency of insurance proceeds. If there are surplus funds after repair and reconstruction is completed, any surplus attributable to overpayments of Insurance Shortfall Payments shall be rebated to the Owner(s) that paid the Insurance Shortfall Payments on an equitable basis and any other surplus funds shall be credited to the next Annual Assessment (or installment thereof) chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit.

4. **Floor Plans and Specifications**. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Building and other Improvements on the Submitted Property was originally constructed or later approved in accordance with this Declaration ("Reconstruction Specifications"). In the event that an Owner desires to modify the Reconstruction Specifications in a material manner, such modifications to the Reconstruction Specifications (other than those modifications to the Reconstruction Specifications that are needed to comply with current applicable building codes) shall be approved by all Board.

5. **Encroachments**. Encroachments upon or in favor of the Units that may be created as a result of such reconstruction or repair (including, but not limited, as a result of requirements to comply with amended building code or other Legal Requirements) shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the Floor Plans and specifications under which the building and other improvements on the Submitted Property was originally constructed or later approved in accordance with this Declaration. Such encroachments shall be allowed to continue in existence for so long as the reconstructed Building shall stand

6. **Construction Fund**. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from Assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section to be disbursed by the Association in reasonably appropriate progress payments to such contractor(s), supplier(s) and personnel performing the work or supplying materials or services for the repair and reconstruction of the Submitted Property as are designated by the Board. No progress payments shall be disbursed until the Association has adopted procedures it deems reasonable and appropriate for the disbursement of such payment.

7. **Delegation**. The Board shall have authority to delegate to any Unit Owner, subject to such conditions deemed appropriate by the Board, any of its rights and/or responsibilities in this Article related to the repair or reconstruction of a Unit in the event the damage to or destruction as a result of fire or other casualty of all or any part of such Unit Owner's Unit. In the event of such delegation, the Unit Owner shall perform such delegated duties in a manner consistent with this Article and subject to the conditions imposed by the Board.

Article XIII
ARCHITECTURAL STANDARDS AND CONTROLS

1. **General**. The Architectural Review Committee ("ARC") may, but shall not be required to, publish written architectural standards, including architectural changes that may be made without need for prior approval of the Association. The standard for approval of alterations of or improvements to the

exterior of a Unit shall include, but not be limited to, aesthetic considerations, materials to be used, harmony with the external design of the existing buildings and structures, sounds to be generated as a result of the alteration or improvement, and the location in relation to surrounding structures and topography. It is not the intent of this Section to prohibit or unduly regulate or burden the process of effectuating such architectural changes. Rather, the purpose of this Article is to ensure that such architectural changes are compatible with the existing architectural style of the Building and the then existing uses within the Building, and that such changes do not negatively impact the value of the Submitted Property. The Board shall serve as the ARC in the event the members of the ARC have not been appointed.

2. **Alterations to a Unit, No Approval Required**. Except as otherwise provided in this Declaration, each Owner shall be expressly permitted to make and/or permit architectural changes, alterations and improvements to be made to the interior portions of their respective without the approval of the ARC, provided that the same do not: (a) adversely affect the structural integrity of any portion of the Building; (b) adversely affect the Building Systems, Life-safety Systems, or the Property Monitoring and Access Systems; damage any other Unit; or (d) violate this Declaration or any rules and regulations adopted by the Board from time to time.

3. **Alterations to a Unit, Approval Required**. Notwithstanding anything to the contrary stated herein, without first obtaining the prior written approval of the ARC, no Owner may make any alteration to or within a Unit that:

a. makes any alteration to, place anything on, make any encroachment onto or across any portion of the Common Elements (including the Limited Common Elements unless otherwise provided herein);

b. makes any material change, addition, alteration or construction (including painting) to the exterior of any Unit;

c. involves connecting to or relocating Common Element pipes, lines, conduits and/or other apparatus for access to common utilities that are located outside of the Unit boundaries (provided, however, an Owner shall not relocate or make any connection to a Common Element pipe, line, conduit and/or other apparatus for access to common utilities if such connection will impair or have an adverse effect to the utilities or service of utilities to another Unit or any portion of another Unit);

d. places an excessive load on any structural or load bearing portions of a Unit; or

e. requires penetration of any Common Element concrete slab, concrete column, or other concrete portion of the structure of the Building.

4. **Approval Conditions**. The ARC shall not grant approval unless the Owner of the Unit for which the change is being requested has presented to the such information as the ARC may reasonably require, which may include, but shall not be limited to, the following documentation: (a) a report or drawing prepared and certified by a structural engineer licensed in the State of Tennessee, which report or drawing shall demonstrate that such proposed interior modifications will not in any way affect or impair the structural soundness or integrity of the Building or any of the Units; (b) plans for the proposed modifications; and (c) a certificate of insurance from applicant's contractor, which names the Association and the Owner of Unit as additional insured.

a. The ARC may require that within thirty (30) days of completion of the interior modifications, a copy of the certificate of occupancy and/or an inspection report prepared and certified by a structural engineer licensed in the State of Tennessee be provided.

b. If alterations to the interior of a Unit requires the penetration of the concrete floor or ceiling slab, the requesting Owner shall also provide the ARC upon its request with a report prepared and certified by a structural engineer licensed in the State of Tennessee confirming that an x-ray analysis or other analysis acceptable to the ARC has been performed for the purposes of verifying that such penetration of the concrete floor or ceiling slab will not impair the structural integrity of such concrete floor or ceiling slab or result in the severing of any structural post-tension system. In addition, all building code requirements must be complied with and necessary permits and approvals secured for any interior modifications.

5. **Changes to Exterior Facade of the Building**. Notwithstanding anything to the contrary in this Declaration, no Owner shall make any material architectural change, alteration, or modification to the exterior facade of the Building that materially affects the overall appearance, quality, or nature of the Building without the approval of the ARC.

6. **Applications to the ARC**. Applications for approval of any alteration or modification requiring same shall be in writing and shall provide such information as the ARC may reasonably require. Once an application and all required information is received by the ARC, the ARC shall stamp the application as being complete, and shall then forward, to the applicant a written notice of application completion (the "Notice of Application Completion"). The ARC shall be authorized to retain an engineer, architect or other consultant to review such application and related documentation and plans, and all costs and expenses related thereto shall be borne solely by the applicant. Approval of an application may be withheld by the ARC until such time as all costs and expenses related to the review of an application have been paid by the applicant. The ARC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, materials to be used, harmony with the external design of the building and other structures that may be located on the Submitted Property, and it shall be entitled to stop any construction that is not in conformance with approved plans.

a. Review Process. The ARC or its designated representative shall approve or disapprove a complete application within thirty (30) days after, the date of the Notice of Application Completion, provided, however, the ARC may extend such thirty (30) day period for up to an additional thirty (30) days by providing written notice to the applicant of the extension prior to the expiration of the original thirty (30) day period. If the ARC or its designated representative fails to approve or to disapprove a complete application within thirty (30) days after the date of the Notice of Application Completion or any applicable extension period, its approval will not be required and this Subsection will be deemed complied with. Notwithstanding the foregoing, even if the requirements of this Subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or Improvement that is in violation of this Declaration or Governing Documents or of any applicable building codes, zoning or other laws.

b. Condition of Approval. As a condition of approval for a requested architectural modification, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such modification. In the ARC's discretion, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner. The ARC also may establish such other conditions of approval as it determines necessary or appropriate, including reasonable construction commencement and completion times and time limits with respect to temporary modifications. The ARC may also require that the Owner provide the

Architectural Review prior to commencing any work with copies of all necessary permits or approvals required by governmental authorities for the proposed modifications.

c. Limitation of Liability. Review and approval of any application hereunder may be made on any basis, including, but not limited to the basis of aesthetic considerations, and neither the ARC nor the Board shall bear any responsibility for ensuring the design quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. The Association, the Board, the ARC or members of the foregoing shall not be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications.

d. Variance. The ARC may authorize variances from compliance with any of the provisions of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the IRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

e. No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC and Board will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Approval hereunder shall not be deemed to constitute a waiver or any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whenever subsequently or additionally submitted for approval or consent.

f. Enforcement. Any construction alteration or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Association, an Owner shall, at his/her/its own cost and expense, promptly remove or cause the removal of any non-conforming construction, alteration or other work and shall restore the property to substantially the same condition as existed prior to the non-conforming construction. Should the Owner fail to do so, the Association or its designees shall have the right to enter the property and do so. All costs thereof, including reasonable attorney's fees actually incurred, shall be an Assessment and lien against such Owner and such Owner's Unit. In addition, the Association may impose a fine. Moreover, if any Owner or Occupant makes any change, alteration or construction (including landscaping) upon the Common Elements in violation hereof, such Owner or Occupant does so at that Owner's or Occupant's sole risk and expense and subject to possible removal by the Association at any time, and at the sole expense of the violating Owner or Occupant. The Board may require that the change, alteration or construction remain on the Common Element without reimbursement to the Owner or Occupant for any expense incurred in making the change, alteration or construction.

g. Construction Compliance Deposit. If the ARC approves the Plans for any alteration or other work, the Owner, in the sole discretion of the ARC, shall make a construction compliance security deposit or post a bond, letter of credit, or other acceptable collateral in such amount in the discretion of the ARC not to exceed fifteen percent (15%) of the total cost of construction ("Construction Deposit") in order to insure compliance with the Plans by the Owner, his representatives and/or agents. Upon Owner's completion of construction, including the removal of all trash and debris, Owner shall notify the ARC of same so that the completed construction and clean-up may be inspected, confirmed, and approved. Once the completed

construction and clean-up have been inspected and approved, the Construction Deposit shall be refunded or released to the Owner; provided, however, the ARC shall be entitled to deduct from the Construction Deposit any costs incurred by the Association to repair any damage to Common Elements or other Improvements within the Submitted Property and otherwise to maintain same in a clean and orderly fashion free of mud, dirt, or other debris. Further, the ARC shall be entitled to deduct from the Construction Deposit the full amount of any fine assessed against the Owner by ARC for non-compliance with the approved Plans and/or covenants set forth in this Declaration.

7. **Approval of Contractors**. In order to minimize confusion and the complications which may result from the construction of a number of Improvements upon Units within the Submitted Property at the same time and in order to insure performance of high quality of construction, no construction shall be commenced upon any Unit until the ARC has given written approval of the Owner's contractor(s); provided, however, no liability shall accrue to the ARC on account of such approval. Such contractors shall be licensed under the laws of the State of Tennessee and shall be sufficiently insured for the construction to be undertaken by such contractor.

8. **Performance of Work**. Any construction work (which work, as used in this Section shall include, without limitation, the reconstruction of the improvements on the Submitted Property and any alterations, restoration, maintenance, repair, modernization, expansion, demolition, razing of existing improvements on the Submitted Property) which shall or may be performed by the Unit Owner of any Unit shall be subject to and performed in accordance with the following requirements and standards: (a) upon commencement of any construction, the party performing such construction shall diligently prosecute such construction to completion; (b) all construction shall be performed in a good and workmanlike manner and in accordance with all Legal Requirements; and (c) the Owner of each Unit shall perform its respective construction so as not to: (i) cause any unnecessary increase in the cost of construction of others; (ii) unreasonably interfere with the construction of others and/or any other construction being performed on the Submitted Property or any part thereof; (iii) unreasonably interfere with the construction of others and/or any other construction being performed on the Submitted Property or any part thereof; or (iv) unreasonably impair the use or occupancy of the Submitted Property or any part thereof by the Unit Owner and/or its Occupants or Permittees.

9. **Safety and Indemnification**. With respect to the performance of any construction work, the Owner of the Unit will at all times: (a) take any and all safety measures reasonably required to protect those performing the such work and all other Owners, Occupants and Permittees from injury or damage caused by or resulting from the performance of its construction; (b) indemnify, hold harmless and defend the Association and other Owners from and against all claims, demands, suits, costs, expenses and liabilities arising from or in respect to the death, accidental injury, loss or damage cause to any natural person or the property of any person as shall occur by virtue of its construction; and (c) indemnify and hold the Association and other Owners of the other Unit harmless from and against mechanics, materialmen's and/or laborer's liens and all costs, expenses and liabilities arising from its construction.

Article XIV
USE RESTRICTIONS

1. **Residential Units**. All portions of the Units shall be used only for such upscale residential uses (which may be for-sale, for-lease, or any combination of the foregoing, from time to time) that are lawful and permitted by applicable zoning ordinances. Notwithstanding the foregoing, no activity shall be conducted on any portion of the Units that constitutes a public or private nuisance or hazardous or offensive use or threatens the life-safety of other Owners or Occupants or Permittees of the Condominium. Permitted uses of the Units shall not be deemed a nuisance and shall not cause the

Owner, Occupant, or their respective Permittees of the Units to be deemed in violation of any provision of this Declaration or Governing Documents.

2. **Prohibition of Damage, Nuisance and Noise**. All Owners, Occupants, and Permittees acknowledge that the Submitted Property contains a variety of land uses. While such uses are intended to be a convenience to all Owners, Occupants, and Permittees and to foster a sense of community and vibrancy, it is acknowledged that the close proximity of such uses and the urban setting in which the Submitted Property is located may, at times, result in greater amounts of noise, light, vibrations, sounds and smells than would exist in other types of communities. Therefore, it is agreed that neither the permitted use of a Unit, in and of itself, nor the customary and foreseeable results of such a use (i.e., food odors and noise from a restaurant) shall be deemed a nuisance. Without the prior written unanimous consent of the Board, nothing shall be done or kept by any individual on the Submitted Property, or any portion thereof (other than those activities or things reasonably expected to be associated with a permitted use) which would increase the rate of insurance on the Submitted Property or any Unit or part thereof; that would be in violation of any statute, rule, ordinance, regulation or permit of any governmental body; or that would materially increase the Common Expenses.

3. **Trash**. All rubbish, trash, and garbage shall be regularly removed from the Submitted Property and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements, temporarily or otherwise, except in trash chutes, trash compactors, or trash facilities designated by the Association.

4. **Pest Control**. Each Owner of a Unit shall have regular extermination of insects, pests, and vermin performed in the Unit and its exclusively assigned Limited Common Elements.

5. **Use of Limited Common Elements**. Except as otherwise provided herein, the use of a Limited Common Element assigned to a Unit is restricted exclusively to the Owner of the Unit to which such Limited Common Element is assigned and said Owner's Permittees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, except as expressly stated otherwise.

6. **Abandoned Personal Property**. Personal property, other than vehicles as permitted herein, shall not be kept, or allowed to remain upon any portion of the Common Elements, other than on a Limited Common Element, without prior written permission of the Board. If the Board determines that a violation exists, then the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The Board shall send the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

Article XV
MAINTENANCE AND SERVICE RESPONSIBILITY

1. **Unit Owner**. Except in the event of casualty or condemnation or as otherwise expressly provided in this Declaration, each Owner shall operate and fully maintain, repair and, when necessary, replace, at its cost and expense, all portions of such Owner's Unit, and all areas that Owner has agreed to operate, maintain, repair and replace elsewhere in this Declaration, so that the same are at all times in good order, condition and repair, consistent with the Community-Wide Standard and property of similar stature in the **Nashville, Tennessee** metropolitan area. The foregoing obligation by each Owner to

operate, maintain, repair and, when necessary, replace, shall include, without limitation: (a) keeping all portions of the Unit and any Limited Common Element serving such Unit in a clean, unaltered, orderly, and sanitary condition; (b) removing, to the extent practicable, snow, ice and surface waters; and (c) keeping all marking and directional signs, if any, on the Unit clear, distinct and legible. Owner shall provide documentation evidencing maintenance (preventative maintenances reports, service tickets, etc.) is provided to the Association at regular intervals.

a. Without limiting the foregoing, but in supplementation thereof, unless otherwise provided herein, any and all decorative fascia, balconies, terraces, canopies, awnings, roof projections, signage, flags, banners and similar items that are located on a Unit shall be maintained, repaired and replaced at the sole cost of the Owner of such Unit. An Owner shall perform his or her responsibility in such manner so as not to unreasonably disturb the other Owners and Occupants. Notwithstanding anything to the contrary stated herein, the Owners shall be permitted to enter into an agreement separate from this Declaration to provide for the sharing of all or part of the responsibility and costs of operation, administration, and maintenance of the Owners' Units and Limited Common Elements assigned to such Units.

b. If the Board determines that any Owner has failed or refused to properly maintain the Owner's Unit, and otherwise generally perform his or her maintenance responsibility, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and diligently pursue such maintenance or repair to completion. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association, then the Association may perform such maintenance, repair, or replacement and assess all costs and expenses incurred by the Association against the Unit and the Owner thereof, which Assessment shall be a lien against said Unit and Owner. If, during the course of performing the maintenance of an Owner's Unit, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at Owner's expense without prior notice to the Owner. The Board may alternatively enforce this Section through monetary fines against the Unit and each day the maintenance, repair, or replacement is not completed shall constitute a separate violation for which fines may be assessed on a daily basis.

c. Failure by an Owner to satisfy the requirements of this Section 1 of this Article XV shall relieve the Declarant of any liability related to defective or negligent construction of the Building or any Unit.

2. **Association**. The Association shall operate and fully maintain, repair and, when necessary, replace (a) all Common Elements, including all Limited Common Elements (except as expressly provided otherwise herein); provided, however, the costs of such Limited Common Elements shall be assessed against the Owner(s) of the Unit(s) to which such Limited Common Elements are assigned; (b) all Building Systems (subject to the limitations more specifically set forth herein); and (c) all Life-safety Systems (subject to the limitations more specifically set forth herein).

a. Building Systems. As to the Building Systems (excluding Life-safety Systems, which are covered below), to the extent portions thereof service solely an individual Unit and are

thereby part of such Unit, the Owner of Unit being so served shall be solely responsible for maintaining, repairing and replacing those portions of such Building Systems at its expense. To the extent portions thereof service more than one (1) Unit and are located within the boundaries of a Unit, such Building Systems shall be maintained, repaired and replaced by the Owner of the Unit in which such Building Systems are located, provided that the expense of the same shall be equitably shared by the Owners' served by such Building Systems as agreed upon in good faith. The Board shall decide any dispute concerning such allocation. Notwithstanding anything to the contrary stated herein, Declarant or the Association may, at its sole expense and without need for a Vote or consent of any affected Owner, relocate any portion of the Building Systems serving a particular Unit or Units, provided that after such relocation, the Building Systems serving the Unit(s) functions at least as well and at no greater cost to the Owner, as existed prior to the relocation.

b. Life-Safety Systems. As to the life-safety Systems, to the extent portions thereof service solely an individual Unit, the Owner of Unit being so served shall be solely responsible for maintaining, repairing and replacing those portions of such facilities at its expense. To the extent portions of the Life-Safety Systems service more than one (1) Unit and are located within the boundaries of the Units, such facilities shall be maintained, repaired and replaced by the Owner of the Units in which the facilities are located, provided that the expense of the same shall be equitably shared by the Owners served by such facilities as agreed upon in good faith. The Board shall decide any dispute concerning such allocation. To the extent portions of the Life-Safety Systems service the Common Elements and such portions of the Life-Safety Systems are located on or within the Common Elements, such facilities shall be maintained, repaired and replaced by the Association, provided that the expense of the same shall be assessed against all Units in proportion to each Unit's Percentage Interest. Notwithstanding anything to the contrary herein, each Owner, at its cost and without reimbursement from the other Owners, shall be responsible for the maintenance, repair and replacement of: (i) sprinkler heads located in its Unit, as well as all branch and feed lines that exclusively support such heads, wherever located; provided, however, that such portion of such branch and feed lines located within party walls, levels and ceilings, if any, shall be maintained, repaired and replaced by the Owners of the adjoining Units; and (ii) all fire control devices (such as smoke detectors and call boxes) located in its Unit.

c. Life-Safety Systems Inspection. The Association shall, as frequently as reasonably appropriate for similar facilities (but in no event less frequently than annually) and at its cost (but subject to reimbursement as a Common Expense), engage a firm to test the Life-Safety Systems and issue reports respecting same, copies of which shall be promptly furnished to all Owners. The Owners agree to cooperate and communicate with each other in respect of the testing, reconfiguration, disengagement (while repairs or reconfiguration are on-going) and alarms of the Life-Safety Systems, with a view toward minimizing interruption and disruption to the Occupants of the Building, and maximizing the prompt dissemination of information regarding emergency situations. Notwithstanding anything to the contrary stated herein, Declarant or the Association may, at its sole expense and without need for a Vote or consent of any affected Owner, relocate any portion of the Life-Safety Systems serving a particular Unit(s), provided that after such relocation, the Life-Safety Systems serving the Unit(s) functions at least as well and at no greater cost to the Owner as existed prior to the relocation. This provision relates only to the fire/life safety systems that are considered Common Elements. The Association is not responsible for annual inspections of the interior of Units.

d. Exterior Glass Surfaces and Doors. The Association shall be responsible for the maintenance, repair and replacement of all exterior glass surfaces and glass doors (together with all components thereof, including without limitation, glass or other transparent materials,

hardware, locks, gilders, frames, door or window casings and weather stripping thereof), subject to the following limitations and exceptions:

i. Each Owner shall be solely responsible for the maintenance, repair and replacement of the mechanical components (including all hardware, locks, gliders, and frames) of any exterior fixed or sliding glass doors. The Owner shall also be solely responsible for periodic washing and cleaning of the interior and exterior surfaces of such doors.

ii. Each Owner shall be responsible for the interior cleaning (excluding interior caulking and sealing of the window wall system) of the glass surfaces facing such Owner's Unit.

iii. The Association shall be responsible for the periodic cleaning of the exterior glass surfaces (except those bounded by a terrace or balcony which shall be maintained by the Owner of the Unit to which the applicable terrace or balcony exclusively serves and except as provided below.

iv. The cost of maintenance and repair of any Limited Common Element glass surface or door may be assessed against the Owner to whom the Limited Common Element is assigned.

e. Other Property. The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall have a reasonable right of entry upon all of the Submitted Property and any portion thereof to make emergency repairs and to do other work reasonably necessary under this Declaration for the proper performance of its duties hereunder and the proper maintenance and operation of the Submitted Property. The Association shall have the power to require that all Owners manage, operate, care for, maintain, and repair their respective property and Improvements thereon and to keep them in an attractive and desirable condition and to otherwise enforce the provisions of this Declaration against all Owners.

f. Costs. The costs associated with the maintenance of areas described above shall be assessed against all Units in accordance with the Percentage Interest in the Common Elements appurtenant to each Unit as set forth in **Exhibit C**.

g. Damage by Elements or Other Owners. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Occupant of any Unit or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Occupant of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

h. Other Damage. The Association shall not be liable to any Owner of any Unit or such Owner's Occupant or Permittee for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Elements or any Unit. The Association shall not be liable to any Owner or any Owner's Occupant or Permittee, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this

Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

i. Failure to Maintain. Notwithstanding the foregoing obligations to maintain, repair and replace, if any Unit Owner or those claiming by, through or under it, abuses, misuses or fails to operate, maintain, repair or replace in the manner provided in this Declaration any item for which it is responsible hereunder or otherwise creates a situation in any portion of the Submitted Property with respect to which non-exclusive easements and licenses have been granted by this Declaration such that said areas require maintenance, repair or replacement in excess of what would be required by normal use of said areas for their intended purposes, the Unit Owner causing the excess use shall be responsible for the excess costs of operating, maintaining, repairing and replacing said areas. Each Unit Owner shall maintain and promptly upon request, from time to time, make available to any other Unit Owner maintenance records for its Unit with respect to which easement rights exist under this Declaration. As to any items (such as exterior painting) that require coordination or cooperation as to timing, materials, payment or the like, the parties shall be reasonable in so cooperating and coordinating.

j. Failure by the Association to satisfy the requirements of this Section 2 of this Article XV shall relieve the Declarant of any liability related to defective or negligent construction of the Building or any Common Element or Limited Common Element.

3. **Mold Disclosure and Waiver**. Mold, mildew, fungi and microbiological organisms (collectively, "mold") are present in soil, air, and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Concerns have been expressed about the possible adverse effects on human health from exposure to mold. According to the consumer product safety commission and the American lung association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or mold. Declarant and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. DECLARANT AND THE ASSOCIATION HAVE NOT PERFORMED ANY TESTING OR EVALUATION OF, AND MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PAST, CURRENT OR FUTURE PRESENCE OR ABSENCE OF MOLD IN ANY OF THE UNITS, THE LIMITED COMMON ELEMENTS APPURTENANT TO THE UNITS, OR ANY OTHER COMMON ELEMENTS, OR WITHIN THE VICINITY OF THE SUBMITTED PROPERTY. Declarant and the Association recommend that each Owner, at the owner's expense, conduct its own investigation and consult with such experts as the owner deems appropriate regarding the occurrence and effects of mold, and the potential sensitivity or special risk that the Owner and his, her or its occupants, who will occupy or use the Unit, may be subject to when excessive moisture or water accumulates indoors. Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all mold in an indoor environment. The key to controlling indoor mold growth is to control moisture. Each Owner shall maintain their respective Units in such a manner as to reduce the potential for increased mold formation or growth, including, without limitation, keeping vents and/or fans clear and functioning and preventing and repairing plumbing, window

and other leaks and sources of moisture. Each Owner shall conduct periodic inspections of their respective Units, any Limited Common Elements appurtenant to their Units, and any other portion of the Submitted Property for which the Owner is responsible to maintain, for the presence of mold or conditions which may increase the ability of mold to propagate within the Unit or other portions of the Submitted Property. Furthermore, each owner shall monitor their respective Units, any Limited Common Elements appurtenant to their Units, and any other portion of the Submitted Property for which the Owner is responsible to maintain, on a continual basis for excessive moisture, water or mold accumulation. If water or moisture is discovered in or around such areas, the Owner shall immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of mold, and Declarant shall not be responsible for such damages. EACH OWNER, BY TAKING TITLE TO A UNIT, HEREBY WAIVES ALL RIGHTS TO DAMAGES AND SUBROGATION OF DAMAGES RESULTING FROM MOLD IN THE UNIT. EACH OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT AND THE ASSOCIATION FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, COSTS, EXPENSES AND LIABILITIES, INCLUDING ALL CASES OF PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY THE PRESENCE OF MOLD AND/OR WATER OR MOISTURE IN THEIR RESPECTIVE UNITS, ANY LIMITED COMMON ELEMENTS APPURTENANT TO THEIR UNITS, AND ANY OTHER PORTION OF THE PROPERTY FOR WHICH THE OWNER IS RESPONSIBLE TO MAINTAIN, to the extent that the damages are caused by: (i) the Owner's negligence or failure to properly maintain and monitor such areas; or (ii) the Owner's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professionals or experts).

4. **Association Inspection Obligations**. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Condominium. Such inspections shall take place at least annually or as otherwise recommended by the professionals providing such inspections. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

5. **Notice of Defects; Time for Remedies; and Limitation of Liability of the Declarant.**

a. If the Association discovers defective or negligent construction or condition of the Building, any Common Element or Limited Common Element, or any other improvement comprising the Condominium, the Association shall provide written notice to the Declarant of the defective construction or condition within thirty (30) days of the discovery of same. Failure to strictly comply with the notice requirements of this Subsection shall irrevocably waive any claim(s) related to such defective construction or condition by the Association.

b. If a Unit Owner discovers defective or negligent construction or condition of a Unit, the Building, or any other improvement comprising the Condominium, the Unit Owner shall provide written notice to the Declarant of such defective construction or condition within thirty (30) days of the discovery of same. Failure to strictly comply with the notice

requirements of this Subsection shall irrevocably waive any claim(s) related to the defective construction or condition by the Unit Owner.

c. All claims for defective or negligent construction or condition of the Building, any Unit, or any other improvement comprising the Condominium against the Declarant must be commenced within twenty-four (24) months of the date the Certificate of Occupancy is issued in connection with the use of the Building. Failure to bring a claim within said twenty-four (24) month period shall result in all claims being irrevocably waived by the Association and Unit Owners.

d. The Association and Unit Owners hereby expressly waive the recovery of any consequential damages against the Declarant including, but not limited to, damages incurred for rental expenses, losses of use, income, profit, financing, and business and reputation.

e. In the event a claim is timely filed, the prevailing party in such action shall be entitled to recover its costs, including reasonable attorney's fee, in connection with such action.

Article XVI
MORTGAGEE RIGHTS

1. **Rights**. Unless at least two-thirds (2/3) of the first Mortgagees and two-thirds (2/3) of the Owners give their consent, the Association or the membership shall not:

a. By act or omission seek to abandon or terminate the Condominium;

b. Change the pro rata interest or obligations of any individual Unit for the purpose of (i) levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

c. Partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;

d. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

e. Use hazard insurance proceeds for losses to any portion of the Submitted Property (whether to Units or Common Elements) for other than the repair, replacement or reconstruction of such portion of the Improvements on the Submitted Property.

2. **Title by way of Foreclosure**. Where a Mortgagee obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit that became due prior to such acquisition of title. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such Mortgagee, its successors and assigns. Additionally, such Mortgagee shall be responsible for all Assessments accruing subsequent to the passage of title, including, but not limited to all charges for the month in which title is passed.

3. **Right to Notice of Violations**. Upon delivery of written request to the Association, identifying the name and address of the Mortgagee and the Unit, a Mortgagee or insurer or guarantor of

a Mortgage on a Unit, will be entitled to timely written notice of the following and shall have the right to cure violations or otherwise respond to or participate in any of the following:

a. any condemnation, loss or any casually loss which affects a material portion of the Submitted Property or any Unit on which there is a Mortgage held by such Mortgagee;

b. any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a Mortgage held by such Mortgagee which remains unsatisfied for a period of sixty (60) days and any default in the performance by an individual Owner of any other obligation under This Declaration or the Governing Documents which is not cured within thirty (30) days.

c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. any proposed action that would require the consent of a specified percentage of Mortgagees, as specified herein;

e. any proposed amendment of the Condominium Instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interests in the Common Elements or Limited Common Elements appurtenant to any Unit or the liability for Common Expenses appertaining thereto; (iii) the percentage Vote in the Association allocated to any Unit; or (iv) the purposes to which any Unit or Common Elements are restricted; and

f. any proposed termination of the Condominium.

4. **No Priority**. No provision of this Declaration or the Governing Documents gives or shall be construed as giving any Owner or other party priority over any rights of the Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

5. **Notice to Association**. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any Mortgagee encumbering such Owner's Unit.

6. **Failure of Mortgagee to Respond**. If a response from a Mortgagee is required under this Article, the Board shall deliver to such Mortgagee a written request for a response to any action by certified or registered mail or other reputable parcel service, return receipt requested (the "Association's Initial Request"). If the Board does not receive from such Mortgagee a response within thirty (30) days after receipt of the Association's Initial Request, the Board shall deliver to such Mortgagee a final request for a response to any action by certified or registered mail or other reputable parcel service, return receipt requested (the "Association's Final Request"), and such Mortgagee shall have fifteen (15) days after receipt of the Association's Final Request to submit a response. Notwithstanding the foregoing, any Mortgagee who receives such written requests from the Board to approve an amendment to this Declaration shall be deemed to have approved such amendment if the Association does not receive a written response from the Mortgagee within sixty (60) days after receipt of the Association's Initial Request.

7. **Construction of this Article**. Nothing contained in this Article shall be construed to reduce the percentage Vote that must otherwise be obtained under the Condominium Instruments or Tennessee law for any of the actions set forth in this Article.

Article XVII
DEFAULT AND REMEDIES

1. **Remedies Cumulative**. The remedies set forth in this Article for breach of the provisions set forth in this Declaration and the Governing Documents shall be in addition to and not in substitution for any other remedies available to the Declarant, the Association, and/or any Owner for breach of this Declaration set forth in this Declaration or available at law, in equity or otherwise, all of which are intended to be cumulative. The Board may in its discretion delegate its rights to enforce this Declaration and Governing Documents. The failure of the Board to enforce any provision of this Declaration or the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter.

2. **Authority and Enforcement**. The Submitted Property shall be used only for those uses and purposes set out in this Declaration. Every Owner, Occupant and Permittee shall comply with this Declaration and the Governing Documents promulgated and adopted by the Association and any lack of compliance therewith shall entitle the Declarant or the Association and, in an appropriate case, one (1) or more aggrieved Owners to take action to enforce the terms of this Declaration and the Governing Documents.

3. **Fines**. The Board shall have the power to impose reasonable fines, which fines shall constitute a lien upon the Owner's Unit for violation of any duty imposed under this Declaration or the Governing Documents; provided, however, nothing herein shall authorize the Association or the Board to limit the use of Common Elements or Voting Interests of such Owner, and the Association and Board shall not be permitted to do so.

4. **Self-Help Rights**. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of this Declaration or the Governing Documents by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both with the obligation to comply with the procedures set forth in this Article. In any such suit at law or in equity, to the maximum extent permissible, if the Association prevails, the violating Owner or Permittee shall pay all costs, including reasonable attorney's fees actually incurred. The violating Owner shall be responsible for all costs incurred in connection with the self-help work, and such costs as may be advanced by the Association shall constitute a lien upon the Owner's Unit.

5. **Conditions of Self-Help Rights**. The right of the Association or its duly authorized agent to perform any self-help work shall be subject to the following conditions and requirements:

a. Such work shall be diligently pursued to completion and, upon completion, the Association or its duly authorized agent shall restore the relevant portion of the violating Owner's Unit as closely as is practicable to the condition that existed immediately before the commencement of such work

b. Such work shall be performed in such a manner as not to cause any unnecessary interruption of or undue interference with the business of the violating Owner, Occupant and/or Permittee;

c. The Association or its duly authorized agent, as applicable, shall indemnify and hold harmless the violating Owner from and against any and all expenses, liabilities, obligations, damages, penalties, claims, actions, costs and expenses, including reasonable attorneys' fees

actually incurred, in connection with loss of life, bodily injury and/or damage to property caused by the Association or its duly authorized agent (as applicable), their employees or agents in connection with the performance of such work, except to the extent the same was caused by the negligence or misconduct on the violating Owner, its employees, licensees or invitees.

d. If the Association or its duly authorized agent is performing the self-help work, the Association shall pay for all costs and expenses as and when it incurs in connection with any such work performed, but shall be permitted to collect all such amounts from the violating Owner, all such costs and expenses, as and when paid, shall constitute a lien against the Owner's Unit.

6. **Notice to Cure**. Before any fine may be imposed or self-help action taken, the Board shall send the violating Owner a written notice identifying the violation(s) and fine(s) or self-help action to be imposed in the event that the violation(s) is not fully cured by the end of the "Cure Period." The "Cure Period" shall be: (a) five (5) business days, if the violation can be cured or remedied solely by the payment of money; or (b) thirty (30) days, as to any other violation; provided, however, that (i) in the case of an emergency involving either imminent danger of personal injury or imminent danger of material damage to property or the interruption of utility services or other critical services to any Unit, the Cure Period shall be such time as is reasonably necessary in light of the circumstances if curative action is promptly commenced and (ii) except in the case of such an emergency, if the nature of the failure is such that it is not subject to cure or remedy solely by the payment of money and if the failing Unit Owner has commenced appropriate curative action prior to the expiration of the Cure Period and thereafter has diligently pursued the completion of such cure and is continuing to do so, then the Cure Period shall be extended for such additional period of time, but not more than sixty (60) days, as shall be required to cure such failure with appropriate, diligent and continuous action.

7. **Challenge**. If the alleged violating Owner, Occupant and/or Permittee challenges the proposed fine or action within three (3) business days of the delivery of the notice of violation, a hearing before the Board shall be held affording the violating Owner, Occupant and/or Permittee a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the giving of notice without the consent of the violating Owner, Occupant and/or Permittee), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violating Owner, Occupant and/or Permittee. Proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Person who delivered such notice. The notice requirement shall be deemed satisfied if the violating Owner, Occupant and/or Permittee (as applicable) appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violating Owner, Occupant and/or Permittee (as applicable) attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not strictly followed.

Article XVIII
COMPLIANCE WITH LAWS AND ZONING

1. **Compliance with Laws**. Each Owner, Occupant and/or Permittee shall each be responsible for complying with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Tennessee, County of Davidson, City of Nashville, and any other governmental entity or agency now or hereafter having jurisdiction over the Submitted Property or the Owners.

2. **Environmental**. No Owner, Occupant or Permittee of a Unit or any portion thereof shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substance of any kind from, on, in, under or in the air above any portion of such Unit, including, but not limited to, any surface waters or groundwater located thereon or into public sanitary sewer systems serving the Unit without complying with all Environmental Laws (hereinafter defined in this Section), including, but not limited to performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. Notwithstanding the above, this prohibition shall not apply to the presence, use, or storage on the Submitted Property of reasonable quantities of Hazardous Substances that are generally recognized to be appropriate for the permitted uses of the respective Units and to maintenance of the Submitted Property (including, but not limited to, Hazardous Substances in consumer products).

a. The term "Hazardous Material(s)" as used herein shall mean any hazardous or toxic substances, materials, chemicals, or wastes in any form and in any concentration that is or becomes, prior to Closing, regulated by the United States or any state or local government authority having jurisdiction over the Property (including any present order or agreement imposing liability or standards concerning any such substances, materials, chemicals, or wastes and any future such order or agreement that becomes effective prior to Closing), and includes without limitation: any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675); any "hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k); petroleum products; volatile organic compounds; radioactive materials; asbestos and lead paint, in any form or condition; and substances or compounds containing PCBs. The term "Environmental Law" as used herein shall mean any federal, state or local law, ordinance or regulation, or any order, demand or guidance document of any governmental agency, relating to Hazardous Materials.

b. Each Owner, Occupant or Permittee of a Unit shall be responsible for and shall pay all costs and expenses related to the disposal or release by such Owner, Occupant, Permittee, or other user of such Unit of any Hazardous Substances, sewage or wastes of any kind in, on, under or in the air above such Unit, which costs and expenses shall include, but not be limited to, closure, removal, remediation, cleanup, containment and other response costs, injuries to persons, damages to property, legal expenses and interest paid to any governmental entity.

c. No Owner, Occupant or Permittee of a Unit or any portion thereof shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any explosives, or any flammable, odorous, noxious, corrosive, or pollutant materials or any other goods that would cause danger or nuisance to a Unit or any portion of the Building. Furthermore, areas located within a Unit or the Building shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code.

d. The provisions of this Section do not affect the rights, liabilities or obligations of any Person under Environmental Laws or other applicable laws, except as may otherwise be expressly provided herein.

3. **Owner's Indemnity**. Each Owner and the Association ("Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, hold harmless, and defend the other Owners and

the Association ("Indemnitee") from and against any and all claims, demands, suits, costs, expenses and liabilities, by or on behalf of any Person, other than the Indemnitee, to the extent arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's Unit or activities therein or to the extent arising out of the Indemnifying Owner's use, exercise or enjoyment of the easements and licenses granted hereunder and from and against all costs, reasonable attorney's fees actually incurred, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom, in case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.

4. **Zoning Compliance**. Except to change a permitted zoning, non-conformity to a zoning conformity, no Owner shall: (a) alter, modify or limit the maximum density allowed for another Unit or the permitted land uses of the Submitted Property; (b) use the Submitted Property for any use other than those permitted under the zoning classification for the property in effect at the time of the recording of this Declaration, (c) seek a special use permit; or (d) make any alterations or allow any use of its respective Unit or take or fail to take any action that would violate the provisions of the Zoning Ordinance of the City of Nashville (collectively, a "Zoning Change"). In the event any Owner desires to seek a Zoning Change, such Owner must receive the prior written consent of Owners holding one hundred percent (100%) of the Vote of the Association. Such consent by the other Owners shall be deemed proper authorization for the Owner seeking the Zoning Change to act on behalf and as the limited lawful agent of the other Owners to seek and obtain said Zoning Change, whereupon the other Owner shall do all things as may be reasonably requested to obtain approval of the Zoning Change, at no cost or expense to the Owner(s) not seeking the change. The aforementioned authorization to act as the limited lawful agent shall be limited to the purposes expressly contemplated herein and any attempt to use the authorization in violation of this Declaration shall be deemed null and void.

Article XIX
EMINENT DOMAIN

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owner(s), pursuant to Section 66-27-207(c) of the Act, as amended or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each Mortgagee shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Owner in the distribution of proceeds to such Unit.

Article XX
EASEMENTS

1. **General**. Declarant does hereby establish and create perpetual, nonexclusive (except as and to the extent provided to the contrary herein) easements in, to, over, across, under and through portions of Submitted Property for the purposes contemplated in this Article for the use and benefit of the respective Owners of the Units and each of their respective Permittees, Mortgagees, and successors and assigns. The scope, nature and extent of the easements are further described in this Article.

2. **Utilities - Blanket Easement**. Subject to the other provisions of this Declaration relating to specific existing or future utilities and the general conditions established in this Section, Declarant

hereby declares, grants, creates, imposes and establishes for the benefit of each Unit with respect to each of the other Units, a perpetual, nonexclusive easement for access, ingress, egress to, from, under, through, over and across any portion of such other Units and the Common Elements upon which any existing or future utilities and related improvements are located and the portion of such other Units and the Common Elements reasonably necessary to access those areas where existing or future utilities and related improvements are located, including, but not limited to, electric power, water, fuel, storm drainage, sewer, natural gas, telephone, HVAC refrigerant lines, property monitoring and other telecommunications systems such as closed-circuit cable television and high-speed internet, parking control systems and controlled access systems and all conduit, raceways and other pathways relating to any of the foregoing which benefit another Unit as of the date of this Declaration, for the purpose of maintaining, repairing, replacing and using such utilities, subject to the right of the Owner of Unit (or, in the case of the Common Elements, the Association) upon which such utilities may be located to relocate such utilities at its own cost and expense in a manner reasonably satisfactory to the Owner of benefitted property at any time.

3. **Surface Water Drainage and Runoff**. Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Unit with respect to each of the other Units, a perpetual, nonexclusive easement over and across any portion of such other Units (but only that portion) upon which any surface water drainage and runoff flow, which benefits another Unit as of the date of this Declaration, subject to the right of the Owner of Unit on which such surface water drainage and runoff flow to collect and discharge same at its own cost and expenses in a manner reasonably satisfactory to the Owner of benefitted property at any time; and provided that no Owner benefited by such drainage may construct any new improvements or alter any existing or future improvements upon such Owner's property or otherwise divert the flow of water from such Owner's property onto another Unit such that the rate of flow of such drainage or runoff would materially, adversely increase over the rate of flow presently existing as of the date hereof, without the prior consent of the affected Owner which consent shall not be unreasonably withheld, conditioned or delayed.

4. **Life-Safety - Blanket Easement**. Declarant hereby grants for the benefit of the Association and each Unit a perpetual, nonexclusive easement over and across any portion of the Building upon which any Life-safety Systems are located for the purpose of maintaining, repairing, replacing and using the Life-safety Systems, subject to: (i) the specific maintenance obligations and assessment provisions set forth elsewhere in this Declaration; (ii) the right of the Owner of Unit on which such systems may be located to relocate the same at its own cost and expense in a manner reasonably satisfactory to the benefitted Owner at any time; and (iii) the right of the Owner of Unit upon which a Life-safety System is located to modify or relate the systems to meet with requirements of governmental authorities.

5. **Property Monitoring and Access System - Blanket Easement**. Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Unit with respect to each of the other Units, a perpetual, nonexclusive easement over and across any portion of such other Units (but only that portion) upon which the existing or future Property Monitoring and Access Systems and related improvements which serve the Units are located for the purpose of maintaining, repairing, replacing and using such Property Monitoring and Access System, subject to: (i) the specific maintenance obligations and assessment provisions set forth elsewhere in this Declaration; and (ii) the right of the Owner of the Unit on which such systems or a portion thereof may be located to relocate same at its own cost and expense in a manner reasonably satisfactory to the benefited Owner at any time. The Owner of any Unit benefited by such easement shall not unreasonably refuse to approve the modification or relocation of the easement granted herein by the Owners of the Unit upon which they are located to the extent required to comply with any requirements that may from time-to-time be imposed by any governmental entity having jurisdiction over such matters.

6. **Blanket Easement for Building Systems; Party Walls and Encroachments**. Subject to the other provisions of this Declaration relating to specific, existing or future utilities and the general conditions established in this Section, Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Unit with respect to each of the other Units, a perpetual, nonexclusive easement over and across any portion of such other Units (but only that portion) as follows

a. All portions of the Submitted Property that are presently utilized for lateral and subjacent support of any portion of the Units (including, without limitation, footings and foundations), to the extent located within any such Units and benefitting the other Units, as same may from time to time be relocated, constructed or reconstructed in accordance with the terms of this Declaration;

b. All portions of the Submitted Property as may be reasonably required for access to support columns (including, without limitation, footings and foundations), beams, slabs, shear walls, vent and other shafts, mechanical rooms, party walls, ceilings and levels, utility, fire safety, communications, Property Monitoring and Access Systems, and similar facilities, emergency generators, sump pumps and lift stations, discharge wells, grease traps, HVAC equipment and other building components from time to time located within a Unit or all Units and benefiting another Unit, together with the right to inspect, maintain, repair, reconfigure, shore, construct, reconstruct and replace same in accordance with the terms hereof. The foregoing easement for access shall also exist for the purpose of: (i) permitting each of the respective Owners of the Units reasonable access to portions of such Owner's Unit that abut portions of a Unit owned by another Owner as may reasonably be required for such access; and (ii) permitting the Owners of the Units to reasonably exercise the easements and other rights granted herein and elsewhere in this Declaration;

c. The Building Systems located within one (1) Unit and benefiting another Unit; and

d. All portions of the Units that consist of party walls, as same may be reconstructed; all portions of the Units that encroach on the other (including, without limitation, balcony, terrace, canopy, awning, landscaping and roof projections and decorative fasciae); and all portions of the Units on which unintentional encroachments arise from construction or reconstruction as permitted hereunder or caused by setting which may from time to time hereafter exist.

7. **Emergency - Blanket Easement**. Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Unit with respect to each of the other Units, a perpetual, nonexclusive easement over and across any portion of such other Units (but only that portion) that is needed for emergency egress from the Building.

8. **Common Walls, Levels and Ceilings**. Notwithstanding anything to the contrary stated herein, the dividing walls, levels and ceilings separating the Units shall be deemed to be party walls, levels and ceilings and each such Owner shall be responsible for one-half of the costs of maintenance, repair and replacement of such party walls, levels and ceilings; provided, however, each Owner shall take all steps required to assure that the fire separation capabilities of such party walls, levels and ceilings are not breached or otherwise adversely impacted by it or anyone claiming by, through or under it. The Owners shall cooperate and coordinate with each other with respect to the maintenance, repair and replacement of any such party walls, levels and ceilings.

9. **Temporary Closings**. In order to establish that the ingress and egress easements and any access ways, located therein are and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, except as herein

specifically granted or as may be reasonably necessary in connection with the performance of any construction, repair, relocation, replacement or maintenance of the improvements comprising such access ways, any utilities or any other improvements, located or to be located in or on the ingress and egress easement areas, the Owner of any Unit within the Submitted Property on which an ingress and egress easement is located, shall have the right to temporarily restrict access to the general public with respect to all or any portion of any such access way, to the extent and for such limited periods as shall be minimally necessary to prevent such dedication or accrual or to permit such construction, repair, relocation, replacement or maintenance; provided, however, such Owner shall exercise the rights granted in this Section in such a manner so as to neither cause any unnecessary interruption of or undue interference with the business use or the residential occupancy of any portion of another Unit, nor unreasonably interfere with rights and privileges granted herein to the other Owners.

10. **Access Easements Benefiting the Association**. Declarant hereby declares, grants, creates, imposes and establishes for the benefit of the Association and its Permittees a perpetual, nonexclusive easement for access, ingress and egress to, from, over, under and through the entire Submitted Property for the performance of its obligations and duties hereunder. To the extent that damage is inflicted on the Common Elements, including, without limitation, Limited Common Elements, or on any Unit through which access is taken, the Association, whether by itself or through agents, employees or others, shall be liable for the prompt repair thereof.

11. **Easements Benefiting the Declarant**. For so long as Declarant owns a Unit, or any portion thereof, primarily for the purpose of sale or lease, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (a) a nonexclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, decorations, marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model units, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit or any portion thereof; and (b) a nonexclusive easement to use and enjoy the Common Elements for special events, promotional activities and grand opening celebrations. In connection with the hosting of special events, promotional activities and grand opening celebrations in the Common Elements, Declarant shall be permitted to have live entertainment and any noise created therefrom shall not be deemed a nuisance and shall not cause Declarant and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of this Declaration or any other Governing Documents.

12. **Telecommunications Easement**. Declarant hereby declares, grants, creates, imposes and establishes upon the Submitted Property for the benefit of the Association and its Permittees a perpetual, nonexclusive easement (the "Telecommunications Easement") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation ("Telecommunications Activity") of telecommunications equipment, including without limitation, broadcast antennae and related equipment, cell tower equipment, or other wireless communication antennae and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the "Telecommunications Equipment"). The Telecommunications Easement shall be exercised in a manner that does not materially degrade, obstruct or interrupt any other Telecommunications Activity of any other Owner or its Occupants or Permittees.

a. Declarant and thereafter the Association shall have a nonexclusive, perpetual and irrevocable easement to use the chases, elevator machine rooms, electrical rooms and telephone or telecommunications rooms to install, service, connect and operate any Telecommunications Equipment and over other portions of the Building for access to, and from the areas housing Telecommunications Equipment.

b. Declarant and the Association hereby agree to indemnify, defend, and hold harmless each other and any Owner for any damage or destruction caused to the property of the other in the exercise of any easement rights granted under this Section.

13. **Cooperation**. All easements and licenses granted in this Declaration and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted. Each Owner agrees to cooperate with the reasonable requests of the other Owners in furtherance of the spirit and intent of the matters addressed in this Declaration.

14. **Damages Resulting From the Exercise of Easement Rights**. Notwithstanding anything to the contrary stated herein, damages caused by the exercise of the easement rights granted in this Declaration, including, but not limited, to reasonable attorneys' fees actually incurred, shall be paid by the responsible Owner, provided that the Permittee of an Owner causing such expense shall be jointly and severally liable.

Article XXI
AMENDMENTS AND TERMINATION

1. **General**. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such prevision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative Vote and written consent of sixty-seven percent (67%) of the Voting Interest, and such amendment shall otherwise comply with the provisions of Section 66-27-317 of the Act. As long as Declarant owns any Unit or any portion thereof, primarily for the purpose of sale or lease, any amendment to this Declaration or the Bylaws shall require the written consent of Declarant. In addition, no amendment to this Declaration shall modify, alter, abridge, or delete: (a) any material rights of an Owner without the consent of such Owner, (b) the permissible or prohibited uses of a Unit absent the consent of the Owner of such Unit; or (c) an Owner's material use of or access to the Common Elements without the consent of such Owner. Notwithstanding the above, no amendment shall modify, alter or delete any provision of this Declaration that benefits Declarant or any license, easement or other use rights of Declarant without the written consent of Declarant attached to and recorded with such amendment. Notice of any meeting at which a proposed amendment will be considered shall state the subject matter of the proposed amendment. No amendment shall be effective until certified by the president of the Association and recorded in the Official Records.

2. **Consent by Benefitted Parties Not Required**. Notwithstanding that certain of the easements created hereby may ultimately run to the benefit of Occupants and Permittees of an Owner of all or part of the Condominium or other non-property owners, nothing contained in this Declaration shall imply that the consent of any such other benefited parties is required in connection with an amendment, modification or termination of this Declaration, unless expressly provided in this Declaration.

3. **Amendments by Declarant**. For so long as Declarant owns any Unit or any portion thereof, Declarant without the necessity of a Vote from the Owners may unilaterally amend this Declaration to: (a) correct any scriveners errors; (b) bring any provision of this Declaration into compliance with the Act or any applicable governmental statute, rule, regulation, judicial determination or rules pursuant to federal law which shall be in conflict therewith; (c) enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Submitted Property subject to this Declaration; (d) modify the size or boundaries of any Unit or Units owned by Declarant and the corresponding Percentage Interest resulting therefrom for so long as such modification does not alter the size or boundaries of any Unit owned by an Owner other than the Declarant and the corresponding

Percentage Interest related thereto; and (e) changes the permitted or prohibited uses of any Unit or Units owned by Declarant.

4. **Termination of Condominium**. The Condominium shall be terminated only by the agreement of all Owners and Mortgagees, and such termination shall be conducted in accordance with Section 66-27-318 of the Act.

Article XXII
SEVERABILITY

If any provisions of this Declaration or the application thereof to any entity or circumstances shall be invalid or unenforceable to any extent and such invalid provision does not materially affect the rights of the parties hereto, the remainder of this Declaration and the application of such provisions to any other, entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall not affect any other provision not expressly held to be void or the provisions so void in circumstances or applications other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Article XXIII
MISCELLANEOUS

1. **Dispute Resolution**. Prior to filing a lawsuit against the Declarant, the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board. Any such request shall be in writing and shall be delivered to Declarant or any member of the Board or the property manager, if any, of the Association. The Owner or Occupant shall in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) or more than twenty-one (21) days from the date of receipt of the request.

2. **Enforcement**. A breach by an Owner of covenants and agreements set forth herein would cause irreparable and continuing injury to the other Owners and, in the event of such breach, monetary damages may be insufficient to compensate such other Owners for its injury. Accordingly, in the event of any breach or threatened breach of this Declaration by an Owner, each affected other Owners shall have the right (without the necessity of posting bond) to injunctive relief or to the issuance of an order to compel performance to enforce the provisions set forth herein; provided, however, such right shall be cumulative of any other rights and remedies under this Declaration, at law or in equity.

3. **Standing for Construction Defect Claims**. To the extent that the Association has standing under any warranty provided for the benefit of an Owner of a Unit and such Owner does not have standing, the Association can, and at the Owner's request and expense, bring claims pursuant to such warranty. The foregoing shall not be deemed to create any obligation of the Association to bring claims at the request of such Owner.

4. **Notice to Owners**. Notice to any Owner set forth herein shall be sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, or electronic transmission at the address or other contact information provided to the Board or Townhouse Board by the Owner or in the event no separate

address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Lot or Unit. It shall be the obligation of every Owner to notify the Board or Townhouse Board in writing of any change in address. Any Person who becomes the Owner after the date on which notice was made upon such Owner's predecessor in title to the Lot or Unit shall be deemed to have received such notice

5. **Notice to Declarant or Association**. The address of the Declarant or the Association for the purposes of furnishing notice(s) as provided in this Declaration or the Governing Documents shall be the principal office of the Declarant or the Association of record in the Office of the Secretary of State for the State of Tennessee, unless and until notice of an alternative address is given by the Declarant or Association in writing to all Owners. Notices addressed as above shall be delivered in person with written acknowledgment of the receipt thereof or sent by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, receipt signature required.

6. **No Third Party Beneficiaries**. Except as expressly provided herein, nothing contained in this Declaration shall be deemed to create any rights or benefit in favor of any Person other than the Owners, their successors, successors-in-title and assigns.

7. **Successor-in-Title**. The provisions of this Declaration shall apply to, inure to the benefit of and be binding upon the entirety of the Submitted Property, as applicable, and the Owner from time to time of any portion of the Submitted Property including, without limitation, and its successors and assigns, or any Mortgagee requiring an interest in any portion of the Submitted Property or any Improvements thereon by reason of foreclosure, deed, or assignment in lieu of foreclosure or purchase at foreclosure sale; provided, however, such Mortgagee shall not incur or be required to assume any obligation under this Declaration unless and until such Mortgagee has so acquired an interest in any portion of the Submitted Property or any Improvements thereon. The failure or default by an Owner to comply with any provision hereof shall not affect the validity of any Mortgage, lien, or other similar security instrument that may then be existing on such Owner's Unit. Whenever in this Declaration a reference to an Owner is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of such Owner or party.

8. **Declarant Services**. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by developments such as this Condominium including, but not limited to, management services. Each Unit Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates. A company affiliated with Declarant may enter into management or other service agreements with the Association and the Owner of a Unit, which may be the Declarant. In such circumstances, the company affiliated with Declarant may reasonably allocate related costs between the Association and the other Owner or applicable party.

9. **Vehicle Damage of Theft**. Neither Association nor Declarant shall be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage from calcium deposits, water or acid damage, to any property placed or kept in any parking space in the Condominium. Each Unit Owner or Occupant, and their Permittees, use parking spaces or place or keep a vehicle and/or any personal property in the vehicle, do so at their own risk.

10. **Books and Records**. Except for confidential, non-public information of the Association or that affect the privacy rights of third parties or otherwise subject to confidentiality or non-disclosure protections or objections under any basis, the books and records of the Association are subject to inspection at the principal office of the Association by any Owner during reasonable business hours and upon seven (7) business days prior written notice. Copies of such records may be purchased at a reasonable cost.

11. **Right to Mortgage Information.** Each Owner hereby authorizes any Mortgagee holding a Mortgage on such Owner's Unit to furnish information to the Board concerning the status of such Mortgage and the loan which it secures, to the extent such information is appropriate to assist the Board in determining if such loan is a valid Mortgage.

12. **Limitation on Liability**. The Association, the Board, the ARC, any committee established by the Board or Declarant, and any member of the Board or any committee, officer, agent, or employee of any of them (collectively, the "Indemnitees") shall not be liable to any Person for any mistake of judgment, whether negligent or otherwise, or for any action or any failure to act under this Declaration. In addition, the Board and the officers of the Association shall have no personal liability with respect to any contract or other commitment made by them, on behalf of the Association (except to the extent that such directors or officers may also be Owners). The Association shall indemnify, hold harmless, and defend the Indemnitees from any and all expense, loss, or liability to others on account of any such contract or commitment. In addition, the Indemnitees shall be indemnified and held harmless by the Association from any expense, loss, or liability to others by reason of having served in such capacity, against all expenses, losses, and liabilities, including court costs and reasonable attorney's fees incurred by or imposed upon such Person in connection with any proceeding to which he may be a party or may have become involved by reason of holding such position, whether or not he holds such position at the time such expenses are incurred, except in cases in which the expenses, losses, and liabilities arise from a proceeding in which such Person is adjudicated guilty of willful misfeasance, gross negligence, or bad faith in the performance of his duties and for which indemnification is prohibited by law under the Tennessee Not For Profit Corporation Act. In the event of a settlement of any such proceedings, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right of indemnification provided in this Section shall not be exclusive of any other rights to which an Indemnitee may be entitled.

13. **General Development Information**. Any brochures, maps, models, handouts, schematics, plans, and facilities provided or available in connection with the Submitted Property and/or the Condominium or the development, construction, promotion, sale, marketing, or leasing of the same and all Improvements thereon: (a) are provided for general information purposes only; (b) are subject to change and deletion without notice by Declarant or by public or governmental authorities; and (c) shall not obligate Declarant to develop, construct, promote, market, sell, or lease any such property or Improvements whatsoever or in any particular manner, or to add to the Submitted Property or the Condominium.

14. **Disclosures**. Each Owner acknowledges and accepts the matters set forth below.

a. The Submitted Property is located in an urban environment and contains both residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living; while some steps have been taken to mitigate sound in the design and construction of the improvements, the Units are not constructed to be soundproof or free from vibrations. Sounds and vibrations can also be generated from sources located within a Unit or Condominium

including, but not limited to, elevator motors, heating and all conditioning equipment, pump rooms, other mechanical equipment, dogs barking and the playing of music.

b. Since in every neighborhood there are conditions that different people may find objectionable, and it is acknowledged that there may be conditions outside of the Submitted Property that an Owner or Occupant or their respective Permittees may find objectionable, and it shall be the sole responsibility of an Owner or Occupant or their respective Permittees to become acquainted with neighborhood conditions that could affect the Submitted Property.

c. The views from an Owner's Unit may change over time due to, among other circumstances, additional development. No representation or warranty is made by Declarant or the Association with respect to the presence or continued existence of any view, scene or natural light from any portion of a Unit. Depending upon developmental of neighboring properties and the removal or addition of landscaping, an existing view or scene may change, be blocked or interfered with. Similarly, the development of neighboring properties may result in improvements that cast shadows on the Building or block natural light.

d. Concrete and hardwood surfaces and other uncovered surfaces within a Unit may transmit noise, and such noise shall not be deemed to constitute a use of a Unit that interferes with or causes disruption to the use and quiet enjoyment of another Unit or any portion thereof by its respective Owner and/or Occupant.

e. The Floor Plans and the dimensions and square footage calculations shown thereon are only approximations. Any Person that is concerned about any representations regarding the Floor Plans should do his/her own investigation as to the dimensions, measurements and square footage shown thereon.

f. No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

g. The Association or Declarant may, but shall not be required to, from time to time, provide measures or take actions that directly or indirectly improve the security of the property; however, each Owner and Occupant and their respective Permittees acknowledges and agrees that neither the Association nor Declarant is a provider of security and neither entity shall have a duty to provide security on or at the property. Furthermore, the Association does not guarantee that non-owners and nonoccupants will not gain access to the property and commit criminal acts on the property, nor does the Association guarantee that criminal acts on the Submitted Property will not be committed by other Owner or Occupant or their respective Permittees. It shall be the responsibility of each Owner and Occupant and their respective Permittees to protect their person and property and all responsibility to provide such security shall lie solely with each Owner and Occupant and their respective Permittees. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of its failure to provide adequate security or the ineffectiveness of measures undertaken.

15. **Interpretation**. The Board shall have the right, power, and authority to determine all questions arising under or in connection with this Declaration and the Governing Documents and to construe and interpret its provisions, and any determination, construction, or interpretation made in good faith by the Board shall be binding on all Owners. In all cases, the provisions set forth in this Declaration shall be construed, in the opinion of the Board, to best effect the intent of the general purposes of this Declaration. The provisions hereof shall be liberally interpreted to effectuate the purposes set forth herein, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

16. **Substantial Compliance with the Act**. Each Owner, on behalf of itself and its successors and assigns in title, acknowledges and agrees that the Condominium Instruments recorded pursuant to the Act, substantially comply with the requirements of the Act and covenants and agrees not to file any type of suit or arbitration challenging the Condominium Instruments on the grounds that they do not strictly comply with the requirements of the Act.

17. **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 provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States in office as of the date of the Recording of this Declaration.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned, being the owner of the Submitted Property to be subject hereto, has caused this Declaration to be duly executed as of the date set forth below.

DECLARANT:

Malvern Music 17, LLC,
a Tennessee limited liability company

By: _____

Print Name: Geoffrey Sernyak

Its: Member

STATE OF Tennessee)
)
COUNTY OF Davidson)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Geoffrey Sernyak, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Member ("Officer") of **Malvern Music 17, LLC**, the within named bargainor and that he/she as such Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing him/herself as such Officer.

Witness my hand and seal the 21st day of October, 2021.

_____
Notary Public

My Commission Expires: _____

ERICA GREENE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 3-6-2024

Exhibit A

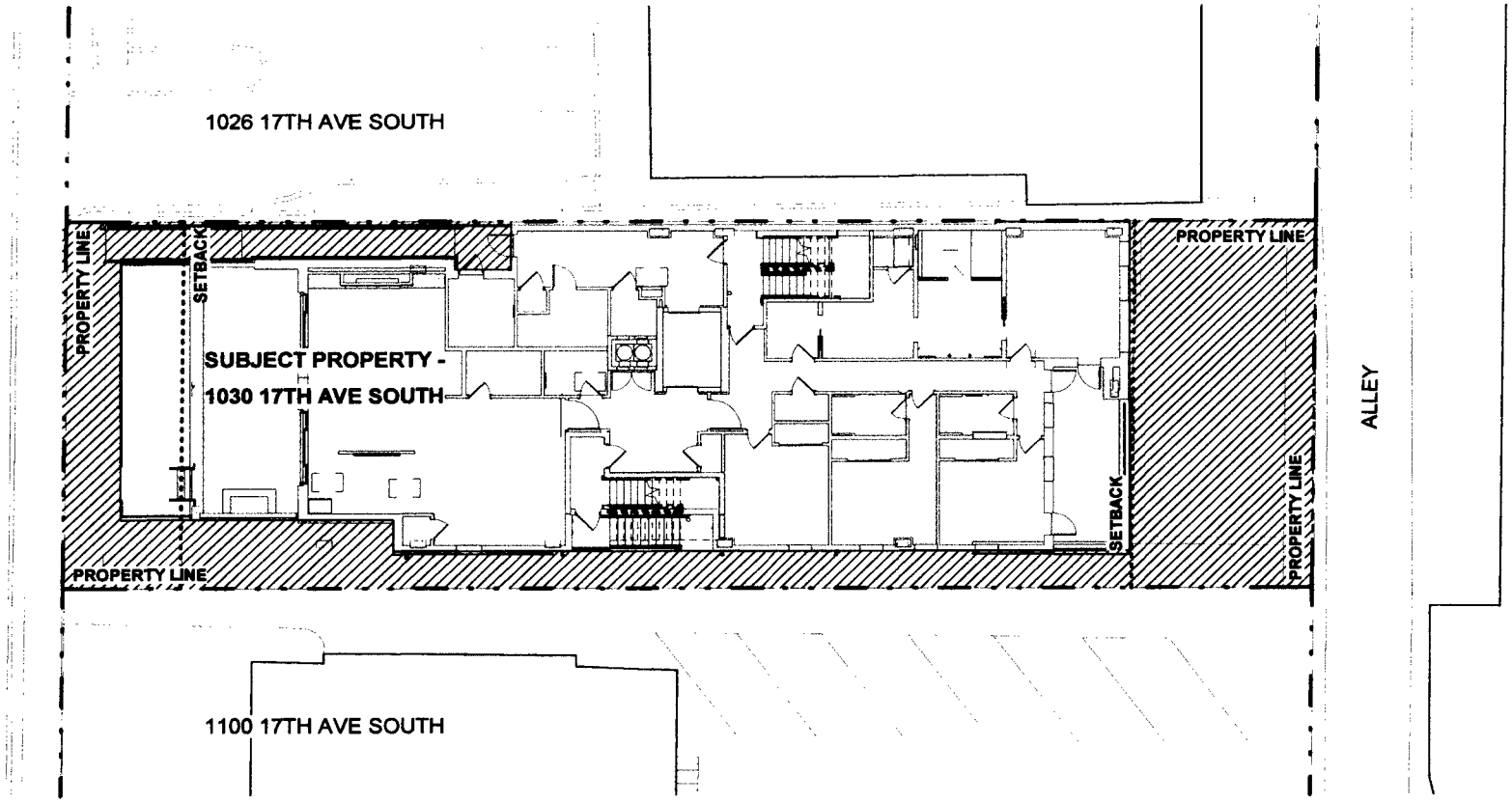
LEGAL DESCRIPTION OF THE SUBMITTED PROPERTY

The land referred to herein below is situated in Davidson County, Tennessee, and is further described as follows:

LAND in Davidson County, Tennessee, being Lot No. 9, on the Plan of J.P.W. Brown's Subdivision, as shown on plat of record in Book 161, page 88, in the Register's Office of Davidson County, Tennessee, to which plat reference is hereby made for a more particular description.

Being the same property conveyed by Warranty Deed from Surety Properties, LLC to Malvern Music 17, LLC as recorded on September 29, 2021 at Instrument Number 20210929-0131058 in the Register's Office of Davidson County, Tennessee.

EXHIBIT B



I, THE UNDERSIGNED, HEREBY CERTIFY THAT THESE PLATS AND PLANS, TOGETHER WITH THE BODY OF THE DECLARATION, CONTAIN ALL INFORMATION REQUIRED BY T.C.A. 66-27-309.

DAVID ROBIN PLUMMER
REGISTERED ARCHITECT
AGRICULTURE
No. 101568
STATE OF TENNESSEE

SIGNATURE

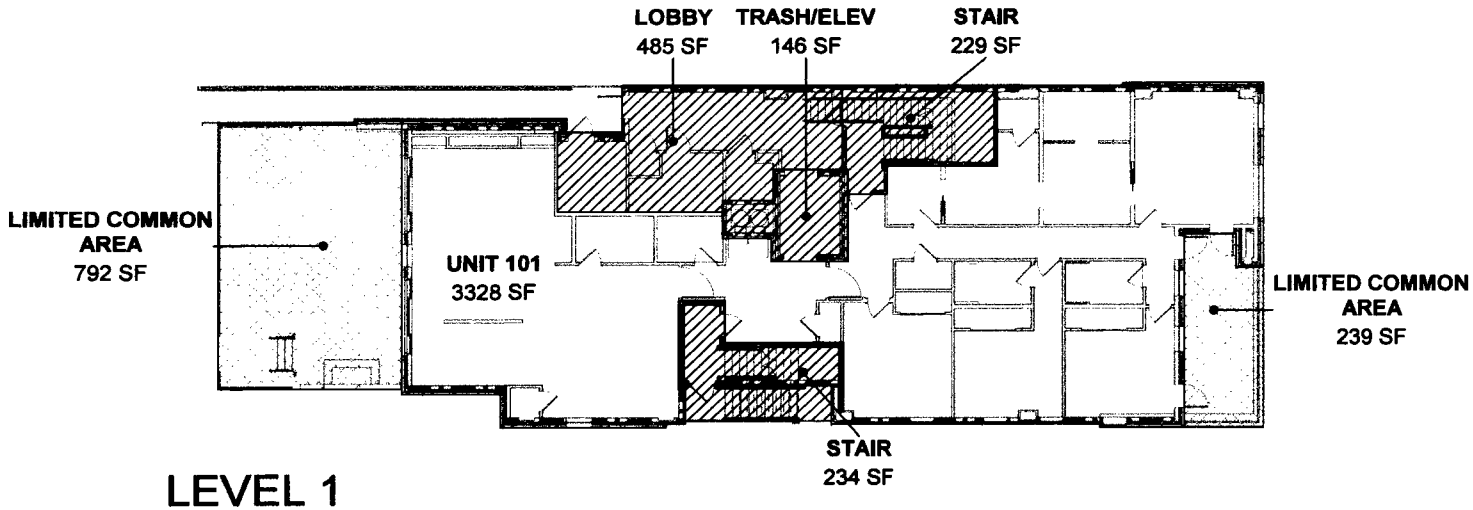
9.14.2021
DATE

ELEMENTS LEGEND	
COMMON ELEMENT	
LIMITED COMMON ELEMENT	

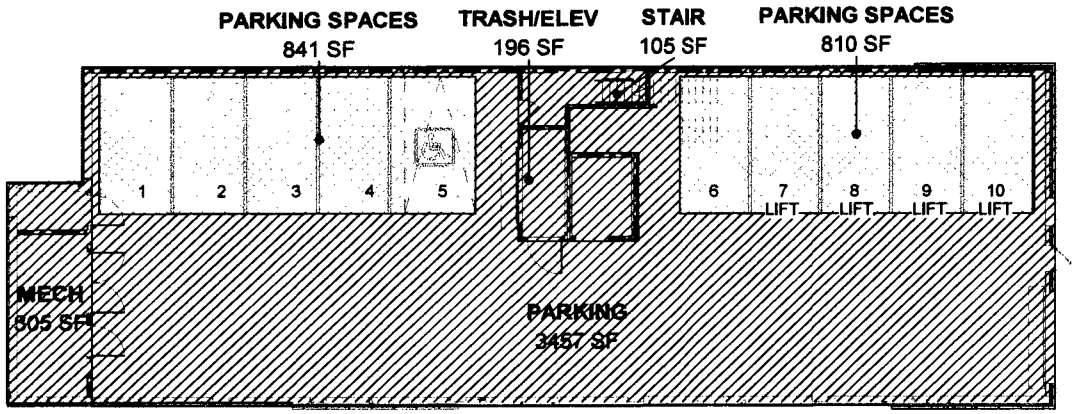
0' 8' 16' 32'

CENTRIC ARCHITECTURE

MALVERN, 1030 17TH AVE S.



LEVEL 1



PARKING

ELEMENTS LEGEND	
COMMON ELEMENT	
LIMITED COMMON ELEMENT	

UNIT	PARKING ASSIGNMENT
101	1, 6
201	10
202	9
301	8
302	7
401	4, 5
402	2, 3

TOTAL = 10 SPACES

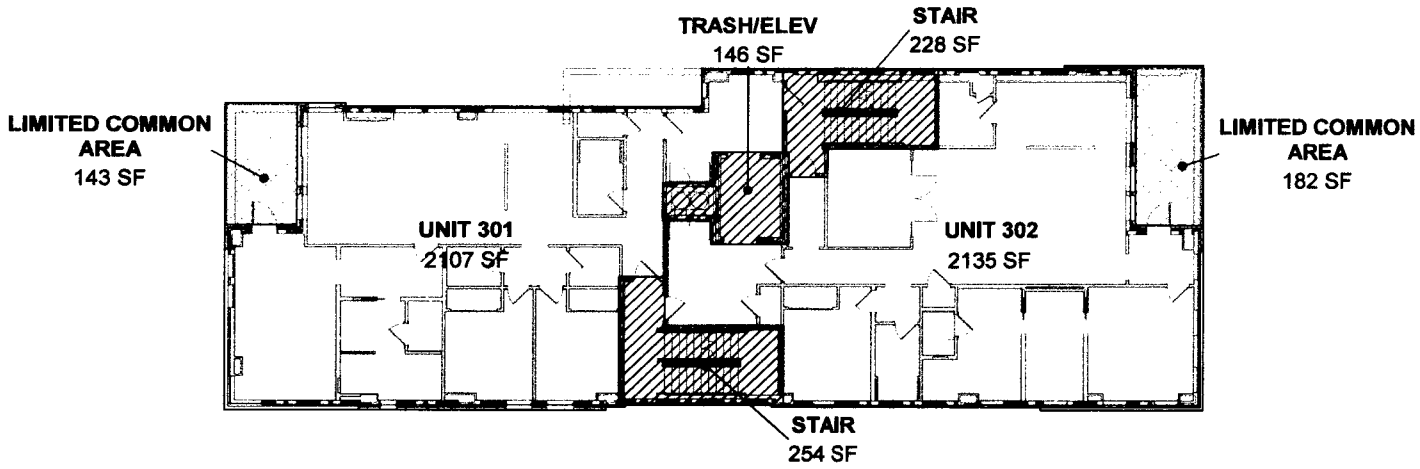
NOTE: ALL PARKING SPACES ARE 162 SF, EXCEPT NO. 5 WHICH IS 193 SF.

0' 8' 16' 32'

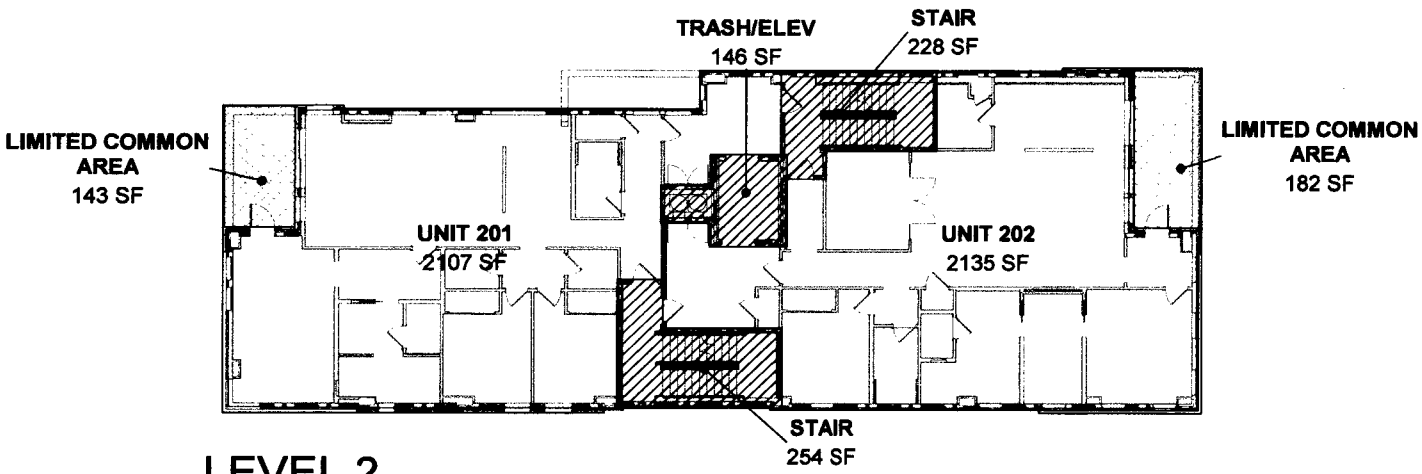
U.N.O

CENTRIC ARCHITECTURE

MALVERN, 1030 17TH AVE S.



LEVEL 3



LEVEL 2

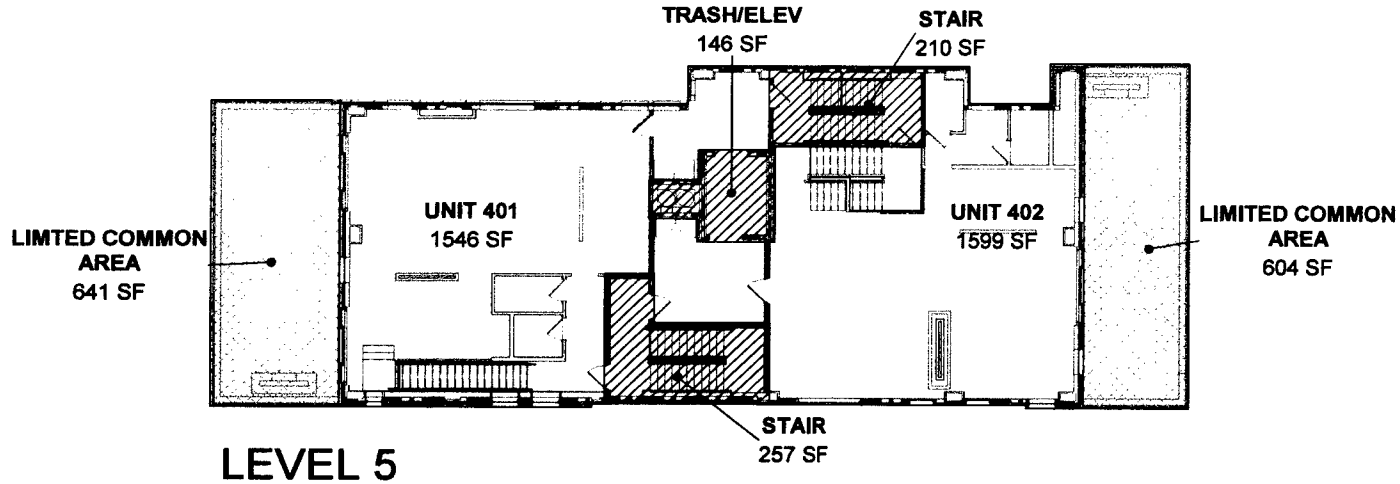
ELEMENTS LEGEND
COMMON ELEMENT
LIMITED COMMON ELEMENT

0' 8' 16' 32'

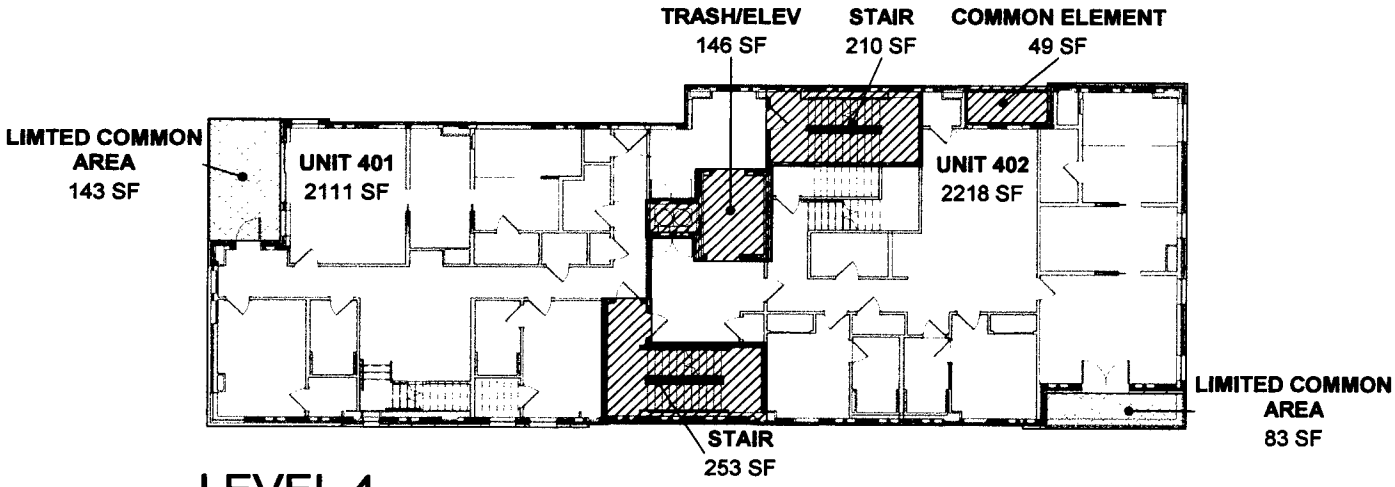
U.N.O

CENTRIC ARCHITECTURE

MALVERN, 1030 17TH AVE S.



LEVEL 5



LEVEL 4

ELEMENTS LEGEND
COMMON ELEMENT
LIMITED COMMON ELEMENT

0' 8' 16' 32'

U.N.O

CENTRIC ARCHITECTURE

MALVERN, 1030 17TH AVE S.

Exhibit C

Unit Identification & Percentage Interest and Voting Interests:

The Percentage Interests, upon which percentage Common Assessments are to be paid and the Voting Interests, are as listed below.

The total square feet of all of the Units upon which the percentages set forth below are based is 19,286 square feet.

Unit No.	USE CLASSIFICATION	UNIT SQUARE FEET	PERCENTAGE INTEREST	VOTE ALLOCATION
101	Residential	3328	17.256%	17.256%
201	Residential	2107	10.925%	10.925%
202	Residential	2135	11.070%	11.070%
301	Residential	2107	10.925%	10.925%
302	Residential	2135	11.070%	11.070%
401	Residential	3657	18.962%	18.962%
402	Residential	3817	19.792%	19.792%
	TOTAL:	19286	100.00%	100.00%

Exhibit D

ARTICLES OF INCORPORATION
OF
MALVERN OWNERS ASSOCIATION, INC.

In compliance with the requirements of the Tennessee Nonprofit Corporation Act (the "Act"), the undersigned, having the capacity to contract and acting as incorporator of a non-profit property owners association under the Act, adopts the following Charter for such association:

Article I
NAME

The name of the corporation is Malvern Owners Association, Inc., hereunder called the "Association".

Article II
MUTUAL BENEFIT CORPORATION

The Association is a mutual benefit corporation.

Article III
INITIAL REGISTERED OFFICE

The street address, county, and zip code of the Association's initial registered office is: Malvern Owners Association, Inc. c/o Malvern Music 17, LLC, 565 Moore Avenue, Nashville, Davidson County, Tennessee 37203, Attn: Geoffrey Sernyak; gps@geoffersonco.com, as may be relocated from time to time. The name of the initial registered agent of the Association is Geoffrey Sernyak, who may be located at the registered office.

Article IV
INCORPORATOR

The name, address, and zip code of the incorporator is Malvern Music, LLC, who may be located at 565 Moore Avenue, Nashville, Davidson County, Tennessee 37203, Attn: Geoffery Sernyak; gps@geoffersonco.com.

Article V
PRINCIPAL OFFICE

The street address and zip code of the principal office of the Association is: Malvern Owners Association, Inc. c/o c/o Malvern Music 17, LLC, 565 Moore Avenue, Nashville, Davidson County, Tennessee 37203, Attn: Geoffrey Sernyak; gps@geoffersonco.com.

Article VI
NON-PROFIT CORPORATION

The Association is non-profit.

Article VII
PURPOSE AND POWERS

This Association does not contemplate pecuniary gain or profit to the members thereof. The purpose for which the Association is organized is to maintain the common facilities of the Malvern mixed use development project located in Davidson County, Tennessee and perform all duties and functions of the Malvern Owners Association, as described in the Declaration of Protective Covenants, Conditions, and Restrictions for Malvern recorded in the Register's Office for Davidson County, Tennessee, hereinafter called the "Declaration" and any additions and amendments thereto as may hereafter be brought within the jurisdiction of the Association, and for this purpose to:

1. Exercise all of the powers, rights, and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time as therein provided.

2. Fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

3. Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association.

4. Borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5. Have and to exercise any and all powers, rights, and privileges which a corporation organized under the Act by law may now or hereafter have or exercise.

6. Except for those amendments which the Tennessee Non-Profit Corporation Act expressly permits to be made by the Directors of the Association, any amendment to these Articles of Incorporation of the Association to be adopted must be approved by not less than sixty-seven percent (67%) of the Voting Interest of the Members or the affirmative written consent of such Voting Interest of the Members unless a higher percentage Vote is required elsewhere in the Declaration or the Act.

Article VIII
MEMBERSHIP

The Association will have Members. Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject to assessment by the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

Article IX
BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors. The number of directors and the method of electing the same shall be provided in the By-Laws of the Association.

As provided in Tennessee Code Annotated Section 48-58-501 *et seq.*, all directors and officers of the Association shall be immune from suit and no present or former director or officer of the Association shall have any personal liability to the Association or its members for monetary damages arising from the conduct of the affairs of the Association, except when such conduct amounts to willful, wanton, or gross negligence. The Association shall indemnify all current and former directors and officers of the Association to the maximum extent allowed by law, including, without limitation, advancing expenses pursuant to Tennessee Code Annotated Section 48-58-504, for any and all claims brought against such persons in connection with their actions or inactions in their official capacity as directors and officers of the Association.

Article X
DISSOLUTION

The Condominium and Association shall be terminated only by the agreement of all Owners and Mortgagees, and such termination shall be conducted in accordance with Section 66-27-318 of the Act.

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IN WITNESS WHEREOF, for the purpose of forming this Association under the laws of the State of Tennessee, the undersigned, being the incorporator of this non-profit, mutual benefit Corporation, has executed these Articles of Incorporation October 21, 2021.

INCORPORATOR:

Malvern Music 17, LLC,
a Tennessee limited liability company

By: _____

Print Name: Geoffrey Sernyak

Its: Member

Exhibit E

BY-LAWS OF MALVERN OWNERS ASSOCIATION, INC.

Article I
DEFINITIONS

The words defined in the Declaration of Covenants, Conditions, and Restrictions for Malvern of Record in the Register's Office for Davidson County, Tennessee shall have the same meaning herein.

Article II
NAME AND OFFICES

1. **Name**. The name of the Association for all Owners of a Unit or Units within the Submitted Property shall be Malvern Owners Association, Inc.

2. **Registered Office and Agent**. The street address, county, and zip code of the Association's initial registered office is: c/o Malvern Music 17, LLC, 565 Moore Avenue, Nashville, Davidson County, TN 37203, Attn: Geoffrey Sernyak; gps@geoffersonco.com, as may be relocated from time to time. The name of the initial registered agent of the Association is Geoffrey Sernyak, who may be located at the registered office, as may be relocated from time to time.

3. **Other Offices**. The Association may also have offices at such other places both within and outside the State of Tennessee as the Board may from time to time determine or the business of the Association may require.

Article III
MEMBERS AND MEMBERSHIP PRIVILEGES

1. **Eligibility and Membership**. The Members of the Association shall consist of the Owners of the Units within the Submitted Property. If an Owner is a trust, then the Member shall be a beneficiary of such trust; and if an Owner or such a beneficiary is a corporation or partnership, the Member may be an officer, partner, or employee of such Owner or beneficiary. No Member shall be required to pay any consideration whatsoever solely for membership in the Association.

2. **Succession**. The membership of each Owner shall terminate when he ceases to be an Owner, and upon the sale, transfer, or other disposition of his ownership interest in the Submitted Property, his membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

Article IV
MEETINGS OF MEMBERS

1. **Annual Meetings**. The first regular annual meeting of the Members may be held, subject to the terms hereof on any day, at the option of the Board; provided, however, that the first annual meeting

shall be held not later than sixty (60) after the expiration of the Declarant Control Period under the Declaration or such earlier date if necessary to comply with applicable laws. Each subsequent regular annual meeting of the Members shall be held within twenty-five (25) days of the anniversary of the first regular annual meeting each year thereafter at such time as set by the Board.

2. **Special Meeting**. Following the Declarant Control Period, special meetings of the Members, for any purpose or purposes, may be called by the president, a majority of the Board, or by Members having not less than sixty-seven percent (67%) of the total Voting Interests of the Association, except as otherwise required by Tennessee statute, the Declaration, or these By-Laws. Business transacted at all special meetings shall be confined to the business stated in the notice of such meeting. During the Declarant Control Period, special meetings of the Members, for any purpose or purposes, may only be called by the Declarant.

3. **Place and Time of Meetings**. Meetings of the Members of the Association may be held at a place and at such time to be determined by the Board within the County in which the Submitted Property is located.

4. **Notice**. By or at the direction of the Declarant, the president, the secretary, or the officer or Person authorized to call the meeting, written notice shall be sent to every Member of the Association by prepaid U.S. Mail, FedEx, UPS, or other reputable private carrier, or facsimile or electronic transmission to the address or other contact information provided to the Board by the Owner or in the event no separate address or other contact information has been provided, then by prepaid U.S. Mail or hand delivery to the Owner's Unit not less than ten (10) nor more than sixty (60) days prior to the date of such meeting. Said notice shall state the place, day, and hour of the meeting and in the case of a special meeting, the purpose(s) for which the meeting is called.

5. **Adjournment of Meetings**. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the previously adjourned meeting shall be on the agenda for said meeting. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

6. **Quorum**. The presence in person or by proxy of at least thirty percent (30%) of the Voting Interest of the Members shall constitute a quorum at all meetings of the Members for the transaction of business. If a quorum is not present and the meeting is adjourned as set forth herein, then at the subsequent meeting the required quorum shall be reduced to fifteen percent (15%) of the Voting Interests of the Members.

7. **Majority Vote; Withdrawal of Quorum**. When a quorum is present at any meeting, the majority Vote of the Voting Interests of the Members present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of an

applicable Tennessee statute, the Declaration, or these By-Laws, a different Vote is required, in which case such express provision shall govern and control the decision of such question.

8. **Method of Voting; Proxies**. Each Member shall be entitled to cast the Vote of the Voting Interests for the Unit(s) owned by such Member as further provided in the Declaration. The Vote of each Member may only be cast by such Member or by a proxy duly executed and given by such Member to his authorized representative as set forth on such proxy. No proxy shall be valid for more than one meeting (unless otherwise stated on such proxy) and shall bear the signature of the Member making the proxy, the date of the meeting (or meetings) to which the proxy relates, and the name of the authorized representative to Vote on behalf of the Member. Such proxy may not be revoked except by actual written notice to the Person presiding over the meeting for which the proxy relates. Proxies shall be filed with the secretary prior to or at the time of the meeting. If title to any property ownership interest in Unit of the Submitted Property entitling the Member to Voting rights as provided in the Declaration is in the name of two or more Persons as co-owners, all such Persons shall be Members of the Association and referred to herein as a "Joint Member." Any such Joint Member is entitled to one unanimous Vote per entitled Member as provided in the Declaration at any meeting of the Members of the Association, and such Vote shall be binding upon the Joint Member until written notice to the contrary has been received by the Board identifying the authorized manner in which the Joint Member's unanimous Vote is to be cast (in person or by proxy). In the event of disagreement among such Joint Member to cast a Vote, such Joint Member shall not be recognized, and such Vote shall not be counted.

9. **Conduct of Meetings**. The President shall preside over all meetings of the Association. The Secretary shall keep the minutes of the meeting and record in the official records of the Association all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

10. **Action Taken Without a Meeting**. The Members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of the number of members which would otherwise be required to approve such action. For instance, if an action required the approval of Members holding a majority of the total Voting rights of the members, then a writing signed by Members holding a majority of the total Voting rights of the Members would be effective as if such approval was given at a meeting duly called for such purpose. Any action so approved shall have the same effect as though taken at a properly called meeting of the Members.

Article V
BOARD OF DIRECTORS

1. **Board Authority and Number**. The affairs of the Association shall be managed by a Board of Directors. Except as may otherwise be required by applicable law, during the Declarant Control Period, the members of the Board, who need not be Members of the Association, shall be appointed by the Declarant and shall serve at the pleasure of the Declarant. After the Declarant Control Period, the Board shall consist of not less than three (3) directors each of whom must be a Member of the Association or be the Declarant, its assignee or officer, agent, or representative thereof.

2. **Election**. After the Declarant Control Period, the election of the members of the Board to be elected for a particular year shall occur at the annual meeting of the Members. The election of the Board by the Owners shall be those Persons receiving the highest percentage of the Voting Interests

cast by each Member for each Unit owned by such Member for as many candidates as are there are Directors being elected at a meeting of the Owners for such purpose at which a quorum is present. Cumulative Voting is not permitted.

3. **Nomination**. Nomination for election to the Board shall be made by a Nominating Committee. Nomination may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman who shall be a member of the Board and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4. **Term of Office**. Directors shall be elected for terms of two (2) years or until their successor is elected. Provided, however, the initial Directors elected by the Members after the Declarant Control Period shall be grouped into two (2) separate classes so that approximately one-half of total number of initially elected Directors are up for re-election each year. Thus, as to such initial Directors elected by the Members, the one-half of the Directors (or the minority if there is an odd number of Directors) receiving the lowest percentage of the Voting Interests will serve for a one (1) year term, and the other one-half of the Directors (or the majority if there is an odd number of Directors) receiving the highest percentage of the Voting Interests will serve for a two (2) year term.

5. **Vacancies**. If any vacancy occurs in the Board, caused by death, removal from office, retirement, resignation or disqualification, a successor(s) shall be elected by majority vote of the remaining Directors for the unexpired term of his predecessor in office. Any Director who ceases to be a Member of the Association during such Director's term in office shall cease being a Director effective with such change, and such Director's successor shall be selected by the remaining Members of the Board.

6. **Director Removal by Board Members**. Any Director may be removed from office with or without cause by the majority vote of the Directors, who shall elect a successor Director for the unexpired term of his predecessor in office by majority vote.

7. **Director Removal by Members**. Notwithstanding any provision to the contrary in the Declaration or these By-Laws, any member of the Board other than a member appointed by the Declarant may be removed with or without cause by a majority Vote of all the Members of the Association.

8. **Place of Meetings**. The Board shall hold their meetings, both regular and special, in the county in which the Submitted Property is located or such other location as may be selected by unanimous consent of the Directors then elected and serving. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

9. **Special Meetings**. Special meetings of the Board may be called by the president or a majority of the Directors upon three (3) days written notice to each Director, either personally, by mail, by facsimile, or by other electronic transmittal. Except as may be otherwise expressly provided by

Tennessee statute, the Declaration or these By-Laws, neither the business to be transacted nor the purpose of any special meeting need be specified in a notice or waiver of notice concerning the meeting.

10. **Quorum**. At all meetings of the Board, the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. The act of a majority of the Directors present at any such meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting by announcement at the meeting without notice until a quorum shall be present.

11. **Action Taken Without a Meeting**. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

12. **Compensation**. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

13. **Agents and Delegation of Powers**. Except as otherwise prohibited by statute, the Declaration or these By-Laws, the Board may delegate any of its powers to other Persons or Management Agent. Any such delegated powers shall be identified in writing maintained in the records of the Association.

Article VI
BOARD POWERS AND DUTIES

1. **Powers**. The Board shall have the following powers subject to the provisions of the Declaration:

a. Enforce the Declaration; and adopt, enforce, and amend Rules and Regulations and/or other Governing Documents governing the use of the Submitted Property and facilities and the personal conduct of Owners and their guests thereon; and establish penalties for the infraction thereof.

b. Elect and remove the officers of the Association and declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board.

c. Open bank accounts on behalf of the Association and designate required signatories.

d. Make contracts and incur liabilities and borrow money for the purpose of repair or restoration of Common Areas that are the responsibility of the Association.

e. Regulate the use, maintenance, repair, replacement, or modification of Common Areas and formulate policies for administration, management, and operation of the Submitted Property and the Common Areas.

f. Cause additional Improvements to be made as a part of the Common Areas.

g. Grant easements, leases, licenses, and concessions through or over the Common Areas.

h. Appoint a Nominating Committee and any other desired committee of the Board and delegate to such committees the Board's authority to carry out certain duties of the Board or other such directives of the Board.

i. Assign the Association's right to future income, including the right to receive Assessments.

j. Exercise any other powers conferred by the Declaration and these By-Laws and exercise any other powers necessary and proper for the governance and operation of the Association and the administration of the affairs of the Association and the Submitted Property.

k. Exercise all other powers that may be exercised in the State of Tennessee by legal entities of the same type as this Association.

2. Duties. The Board shall have the following Duties subject to the provisions of the Declaration of the Association.

a. Adopt and amend budgets for revenues, expenditures, and reserves; send notice of Assessments and any other duly levied charges to Owners; collect Assessments and any other duly levied charges from Owners; and impose charges for late payment of Assessments or other duly levied charges.

b. Determine the fiscal year of the Association and change said fiscal year from time to time as the Board deems necessary or appropriate.

c. Hire and discharge managing agents and independent contractors, other employees, and agents; and supervise all officers, agents, and employees of the Association to see that their duties are properly performed.

d. Comply with the instructions expressed in resolutions duly adopted at any regular or special meeting of Owners at such meeting.

e. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property.

f. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas and for services provided to Owners.

g. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or the production of Association information and/or documents.

h. Impose reasonable charges for services rendered in connection with the transfer of a Unit.

i. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or any two (2) or more Owners on matters affecting the Submitted Property. Foreclose the lien against any property for which Assessments or other duly levied charges are not paid or to bring an action at law against the Owner personally obligated to pay such amounts.

j. Provide for the indemnification of the Association's Officers and members of the Board and maintain liability insurance on such Directors and Officers.

k. Secure insurance policies as required or allowed by the Declaration, and in this regard, review the amounts of coverage afforded under such policies.

3. Non-Delegation. Nothing in these By-Laws shall be considered to grant to the Association, the Board or the officers of the Association any powers or duties which, by law, have been delegated to the Owners.

Article VII
OFFICERS

1. **Offices**. The officers of the Association shall be a president, a vice-president, a secretary, a treasurer, and such other officers as the Board may from time to time create.

2. **Election of Officers**. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members. The officers shall be elected by the Directors from among the members of the Board.

3. **Term**. The officers of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4. **Special Appointments**. The Board may elect such other officers as the affairs of the Association may require each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5. **Resignation and Removal**. Any officer may be removed from office with or without cause by the affirmative vote of a majority of the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in the notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. **Vacancies**. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

7. **Multiple Offices**. The offices of secretary and treasurer may be held by the same Person. No Person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to this Article.

8. **Compensation**. No Officer shall receive compensation for any service he may render to the Association. However, any Officer may be reimbursed for his actual expenses incurred in the performance of his duties.

9. **President**. The president shall be the chief executive officer of the Association and shall preside at all meetings of the Members and the Board. The president shall have general and active management of the affairs of the Association, shall see that all orders and resolutions of the Board are carried into effect, and shall perform such other duties as the Board shall prescribe. The president may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

10. **Vice-President**. The vice-president shall act in the place and stead of the president in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

11. **Secretary**. The secretary shall attend all sessions of the Board and all meetings of the Members and shall record all votes and the minutes of all proceedings. The secretary shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board and shall perform such other duties as may be prescribed by the Board or president. If the secretary is not able to perform any duty as herein or otherwise provided, it is the sole responsibility of the secretary to delegate such duties until such time that the secretary resumes these duties. The secretary may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

12. **Treasurer**. The treasurer shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements of the Association and shall deposit all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The treasurer shall disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements. At the regular meetings of the Board or whenever they may require it, the treasurer shall render to the president and Board an account of all transactions of the treasurer and of the financial condition of the Association. The treasurer shall perform such other duties as the Board may prescribe.

13. **Managing Agent**. The Board shall have the authority to engage the services of an agent ("Managing Agent") to undertake any of the management duties, Administrative Functions, or specific Officer duties (the "Delegated Tasks") for the efficient operation of the Submitted Property, or any part thereof, to the extent deemed advisable by the Board and to manage the affairs of the Association. The Delegated Tasks shall be set forth in the Managing Agent's contract for services to be performed for the benefit or on behalf of the Association. The Managing Agent shall be required to have fidelity bond coverage on its employees handling Association, and the cost of such services shall be incurred by the Association.

Article VIII
MISCELLANEOUS PROVISIONS

1. **Fiscal Year**. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of such a resolution, the fiscal year shall be the calendar year.

2. **Reserves**. The Board shall provide for such reserves as the Directors, in their discretion, determine proper to provide for contingencies, to repair or maintain any portion of the Submitted Property, or for such other purpose as the Directors determine beneficial to the Association.

3. **Checks**. All checks or demands for money and notes of the Association shall be signed by such officer or officers or such other Person(s) as the Board may designate.

4. **Books and Records**. Except for confidential, non-public information of the Association or that affecting the privacy rights of third parties or otherwise subject to confidentiality or non-disclosure protections or objections under any basis, the books and records of the Association are subject to inspection at the principal office of the Association by any Owner during reasonable business hours and upon seven (7) business days prior written notice. Copies of such records may be purchased at a reasonable cost.

5. **Amendment**. Except as otherwise provided herein, the provisions of these By-Laws may be changed, modified, or amended upon the affirmative Vote of not less than sixty-seven percent (67%) of the total Voting Interest of all the Members or the affirmative written consent of such percentage of the Members of the Association, unless a higher percentage Vote is required elsewhere in these By-Laws, the Declaration, or by Tennessee statute. However, any such change, modification, or amendment that would change or delete any right, remedy, benefit, or privilege afforded to the Declarant under these By-Laws shall require the consent of the Declarant in order to be effective.

6. **Indemnification**. The Association shall indemnify any current or former Director, officer, or employee of the Association against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments, in connection with any action, suit or proceeding, whether civil or criminal in nature, in which he is made a party by reason of being or having been such a Director, officer or employee (whether or not a Director, officer or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to matters in which he shall have been adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of his duty. The Association may also reimburse to any Directors, officer, or employee the reasonable costs of settlement of any such action, suit, or proceedings; if it shall be found by a majority of the Directors not involved in the matter of controversy, whether or not a quorum, that it was in the interest of the Association that such settlement be made and that such Director, officer, or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, or employee may be entitled by law or under by-law, agreement, Vote of Members, or otherwise.

7. **Inconsistencies**. In the event, these By-Laws shall be inconsistent with the Declaration, then the Declaration shall be controlling.

8. **Headings**. The headings used in these By-Laws have been inserted for administrative convenience only and do not constitute matters to be construed in interpretation.

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CERTIFICATION

The undersigned hereby certifies that the foregoing By-Laws were duly executed and adopted by the Declarant on October 21, 2021.

DECLARANT:

Malvern Music 17, LLC,
a Tennessee limited liability company

By: _____

Print Name: Geoffrey Sevush

Its: Member