

PUBLIC COPY**[ORAL ARGUMENT NOT YET SCHEDULED]****No. 19-1028****(consolidated Nos. 19-1058, 19-1059, 19-1060, 19-1061 & 19-1062)**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GEORGE JOHNSON,
Appellant,

v.

COPYRIGHT ROYALTY BOARD and LIBRARIAN OF CONGRESS,
Appellees,

AMAZON DIGITAL SERVICES, LLC, et al.,
Intervenors.

On Appeal from a Final Determination of the Copyright Royalty Board
Docket No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*)

**INITIAL OPENING BRIEF
FOR APPELLANT GEORGE D. JOHNSON**

George D. Johnson (“GEO”)
PO Box 22091
Nashville, TN 37202
(615) 242-9999
george@georgejohnson.com
Pro Se Songwriter & Publisher
d/b/a George Johnson Music
Publishing (“GJMP”)

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1) the undersigned appellant certifies:

A. Parties and Amici

Appellant/Intervenor Google LLC (“Google”)

Appellant/Intervenor Spotify USA Inc. (“Spotify”)

Appellant/Intervenor Pandora Media, LLC (“Pandora”)

Appellant/Intervenor Amazon Digital Services LLC (“Amazon”)

Appellant/Intervenor National Music Publishers’ Association, Inc. (“NMPA”)

Appellant/Intervenor Nashville Songwriters Association International (“NSAI”)

Appellant George Johnson, *pro-se* (“GEO” or “Johnson”) d/b/a George Johnson Music Publishing (“GJMP”)

Appellee The Copyright Royalty Board (“CRB”) and Librarian of Congress (“LOC”)

Party Apple, Inc. (“Apple”)

Additional Parties ASCAP, BMI, Church Music Publishers Association, David Powell, Deezer S.A., Harry Fox Agency, Gear Publishing, Music Reports, Omnifone Group Limited, RIAA, Rhapsody International, Sony Music Entertainment, SoundCloud Limited, Universal Music Group and Warner Music Group.

No amicus curiae has filed a notice of intention as of the filing of this Brief.

B. Ruling Under Review

Final Determination of the United States Copyright Royalty Judges issued on February 5, 2019, 84 Fed. Reg. 1918, Docket No. 16-CRB-0003-PR (2018-2022) *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*¹ (the “Final Determination”).

C. Related Cases

No. 19-1028 was consolidated with Nos. 19-1058, 19-1059, 19-1060, 19-1061 & 19-1062.

/s/ George Johnson
George Johnson, pro-se

¹ <https://www.federalregister.gov/documents/2019/02/05/2019-00249/determination-of-royalty-rates-and-terms-for-making-and-distributing-phonorecords-phonorecords-iii>

CORPORATE DISCLOSURE STATEMENT

George D. Johnson is a natural person and operates his publishing company as a sole proprietorship.

GLOSSARY

CRB	Copyright Royalty Board
CRJs	Copyright Royalty Judges
Phonorecords I	Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (<i>Phonorecords I</i>) Docket No. 2006-3 CRB DPRA
Phonorecords II	Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (<i>Phonorecords II</i>) Docket No. Docket No. 2011-3 CRB
Phonorecords III	Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (<i>Phonorecords III</i>) Docket No. 16-CRB-0003-PR (2018-2022)
SDARS III	Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and “Preexisting” Subscription Services (SDARS III) Docket No. 16-CRB-0001—SR/PSSR (2018-2022)
GEO	George D. Johnson, a <i>pro se</i> songwriter, music publisher, singer, recording artist, and copyright author whose works are subject to 17 U.S.C. §115

The Licensees or Services

Phonorecords III licensee
participants such as
Pandora, Spotify, Amazon, and
Google

SME

Sony Music Entertainment

WDS

Written Direct Statement(s)

Copyright Owners

Term fashioned by NSAI and
NMPA, that falsely suggests that
they represent all copyright
owners, rather than a significant
market share

DiMA/Google

Digital Media Association

RIAA

Recording Industry Association
of America

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STATEMENT OF JURISDICTION

A. Jurisdiction Of Copyright Royalty Judges

Pursuant to 17 U.S.C. § 801.

B. Basis For Jurisdiction Of Court Of Appeals

Pursuant to 17 U.S.C. § 803(d)(1) and § 803(c)

C. Timeliness Of Appeal

On February 5, 2019, the CRJs issued their Final Determination, 84 Fed Reg. 1918, Docket No. 16-CRB-0003-PR (2018-2022) *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)* pursuant to 17 U.S.C. § 803(d)(1). The Board denied GEO's motion for rehearing on June 6, 2018.

STANDING AND SCOPE OF REVIEW

GEO has standing to seek review because GEO is a party whose rights are affected by the ruling below in *Phonorecords III*. GEO is the author of works and owner of copyrights subject to §115. GEO's livelihood is directly affected by the royalty rates and terms determined by the Judges below.

In a separate proceeding, the CRB has previously recognized GEO's standing:

“Finally, the Services argue that “to the extent GEO merely seeks to object to the rates set in this proceeding ... *despite not itself* using or *being subject to the license at issue*, the Librarian of Congress has previously held such an interest to be insufficient.” *Id.* (emphasis added). The Services' reliance on the Librarian's decision in *PSS II*...is misplaced because it is based on an erroneous premise. Unlike the party in *PSS II*, GEO *is* subject to the license at issue. Regardless of the Services' past programming practices and present intentions, they are free to use GEO's works at any time and GEO would have no say in the matter—that is the essence of a statutory license. For the forgoing reasons, the Judges **DENY** the Services' Motion. **SO ORDERED.**”

September 29, 2016 *Order Denying Services Motion to Dismiss George D. Johnson* (SDARS III).

STATEMENT OF ISSUES²

I. Whether the CRB erred by bifurcating the Subpart A royalty rate for mechanical sales (*See* 37 C.F.R. §385.3), not setting these rates *de novo* (*See* 37 C.F.R. § 385.17; *see also* 37 C.F.R. § 385.26), not adjusting these rates for basic government inflation from 1909 to 1977³ (9.1 cents would be approximately \$.50 cents) (*See* Exhibit A Inflation Chart by GEO), and by not holding public hearings?

II. Whether the CRB erred and exceeded its statutory authority in continuing to allow 9.1 cent Subpart A underlying works *to be given away for free* through “offline listening” and “limited downloads”⁴ under 37 C.F.R. §385 Subparts B and C which violates the Copyright Act? (*See* § 385.31(a)(b)(c) & (d))

III. Whether the CRB erred by abandoning the per-play rate?

² This Court imposed a 3000-word limit on this Brief. That limit precludes full briefing of the issues raised in GEO’s March 11, 2019 Statement of Issues (Docket #1777047). GEO hereby preserves all rights and issues not raised. These issues are expressly not abandoned. Specifically, these issues include but are not limited to Constitutional infirmities in the decision below, which will be asserted in a separate suit.

³ <https://www.copyright.gov/licensing/m200a.pdf> U.S. Copyright Office website, *Mechanical License Royalty Rates* 1909 to Present

⁴ <https://www.crb.gov/rate/16-CRB-0003-PR/attachment-a-part-385-regs.pdf> 385.31 Royalty Rates “...Limited Downloads of musical works...for which the Service receives no monetary consideration, *the royalty rate is zero.*”

IV. Whether the CRB erred and exceeded its statutory authority by not properly weighing the negative effects of giving away Subpart A sales for free through “limited downloads” which directly allows Subpart B and C streaming performances to “substitute for” (See 17 U.S.C. § 114(f)(1)(B)(i)(I and II) or “cannibalize” Subpart A sales?

V. Whether the CRB erred and exceeded its statutory authority by not properly weighing the negative effect of the “shadow” of compulsory government rates at \$.0005 in determining new songwriter royalty rates? Except for the flawed *Phonorecords I*, Subpart A and B rates have always been set in the shadow and therefore not set *de novo*?

VI. Whether the CRB erred by not admitting GEO’s evidence, adopting a BUY button rate structure and not fixing *Phonorecords I* flawed rate structure?

STATEMENT OF THE CASE

The CRJ's published notice on January 6, 2016. 21 entities filed Petitions. On June 15, 2016, some participants notified the Judges of a partial settlement regarding physical phonorecords and PDDs found in Subpart A. The Judges published notice and accepted comments from interested parties.

On October 28, 2016, NMPA, NSAI, and SME filed a Motion to Adopt Settlement Industry-Wide asserting they had resolved the 9.1 cent Subpart A issue raised by SME — all whom opposed raising the 9.1 cent rate for songwriters from its 2006 rate, therefore, the rate was not set *de novo*.

The Judges evaluated the remaining objection to the settlement filed by GEO and found that GEO had not established that the settlement agreement “does not provide a reasonable basis for setting statutory rates and terms.” See 17 U.S.C.801(b)(7)(A)(iii).

GEO filed a total of *six* objections/motions (See CRB Filing No.'s CRB63, CRB68, CRB82a, CRB88, CRB89, and CRB102) to the Subpart A settlement arguing the negotiating parties did not provide a reasonable basis for keeping the price-fixed 9.1 cent rate when basic government inflation from 1909 to 1978 *had been ignored and not*

factored into the 2019 royalty rate, now without hearing or public debate. The CRB published the Final Rule on March 28, 2017.

In Preliminary Disclosures and WDS all Parties proposed a combination of rates and terms, including 1.) percentage of service revenue 2.) per-subscriber rate, and 3.) a per-play rate.

Apple proposed \$.00091 per-play rate for Subpart B while the Services proposed per-play rates “remain unchanged” or *lower* than the current rate (approx. \$.0005 per-play.) NSAI/NMPA proposed \$.0015 and GEO proposed \$.01 increasing to \$.05 cents per-play over 5 years.

Beginning March 8, 2017, the Judges conducted a hearing with 37 witnesses and over 1,100 exhibits. GEO presented oral testimony, evidence and was declared an expert witness by the Judges. However, the Judges never admitted even one of GEO’s exhibits. The parties delivered closing arguments June 7, 2017, GEO submitted a written closing argument.

The Judges rejected the per-play rate for a percentage of revenue model which GEO opposed. Motions for Rehearing were submitted and denied. On February 5, 2019, the CRJ’s issued their Final Determination and GEO hereby appeals.

INTRODUCTION

In general, rates and terms determined by the CRB (either directly or indirectly) in *Phonorecords III* do not reflect a fair or free-market price for music.

In fact, *it was this \$.000 cent rate structure created out of thin air in Phonorecords I* by the Services/Licensees, NMPA, DiMA, RIAA, music lobbyists, select foreign publishers/record labels, and others (See Hearing Transcripts March 9, 2017 Pages 324-527 testimony) that was never intended to reflect a fair or free market, but simply accommodate a one-sided and faulty business model where Licensees could now get their only product for free.

It's the Licensees that make all the advertising dollars and subscription fees *transferring the value of music copyrights from creators to themselves*, while cruelly forcing songwriters to accept literally \$.000 per song. *Phonorecord I* participants took a 100-year business model that worked for individual American songwriters at 9.1 cents per mechanical, then destroyed it overnight by making the rate \$.000 cents per mechanical overnight which has only further eroded the value of music copyrights in our economy, and in this rate proceeding.

These rates and terms must be changed to serve authors as well.

(What if every attorney in America was compelled by an administrative agency to accept \$.000 per-billable hour under a government compulsory license?)

Even the Copyright Office noted “[v]iewed in the abstract, it is almost hard to believe that the U.S. government sets prices for music. In today’s world, there is virtually no equivalent for this type of federal intervention.”⁵

The Subpart A and Subpart B royalty rates determined by the CRB are different than from what the free-market or fair market would actually provide and therefore both Subpart A and B rates have always been below market, erroneously set, with clear error and are 100% unreasonable for individual creators.

The outcome is predictable: The rate of compensation, in fact, is *set so low* that it almost entirely deprives the copyright owners of the benefit of their creativity. This is an outcome *never contemplated by Congress* in establishing the regime whereby the Judges determines royalties or the Founders when they envisioned a property right itself as serving the public interest.

⁵ *Register’s Music Licensing Report*, see also Aloe Blacc (arguing that “(w)e let owners of every other kind of copyrighted work negotiate their own market prices.”).

When a particular piece of music is created, it represents the unique and uniquely original conception of the musician and lyricist who created it. By contrast to inventions covered by patent law, copyright protects unique forms of property that would not exist but for that creator:

If Shakespeare had died as a child we should never have had Hamlet, but if Newton had died as a child we should certainly have calculus today. Of course, that is also the great advantage of science. Having seen the calculus, one can improve on it, but it is hard to imagine an improved Hamlet.

Paul Goldstein, The Future of Software Protection, 47 U. Pitt. L. Rev. 1119, 1123 (1986).

Today the dissemination of underlying works by way of physical embodiments such as CDs or downloads (sales) is being eclipsed by all electronic streaming via the Internet, either by means of subscription services or (free) nonsubscription streaming, interactive or non-interactive. (See Exhibit B - RIAA 40 years of US Music Sales Chart)

In Exhibit B all *sales* are in blue from 1980 to 2020 *but are at a rate of 2 to 9.1 cents per copyright*. By comparison, the tiny sliver of green for streaming since 2005 is at a rate of either *free* or *\$.00* cents per copyright — so this demonstrates the practical problem.

This chart is clear evidence of streams substituting for sales (GEO Issue IV) and demonstrates the *devastating effect the rate structure created in 2008 Phonorecords I* has had on songwriters and Music Row.

THE LOSS OF MUSIC ROW

Nashville, Tennessee, has a world-famous district called Music Row. Music Row is a mile-long stretch of two one-way streets, 16th and 17th Avenue. The near-zero streaming rates adopted in the Order below have decimated songwriters throughout the nation, as seen by what's happened on Music Row.

“Mechanical royalties have decreased and continue to decrease by an alarming rate. Many songwriters report a reduction of 60 to 70% or more. As streaming becomes more popular, sales and performance royalty income per songwriter continues to decline. Twenty years ago there were between **3 and 4 thousand** music publishing deals available for songwriters in Nashville. Today there are somewhere between **3 and 4 hundred**.”

Comments from Appellant Bart Herbison from “Music Licensing Study” Copyright Office, September 11, 2014. (citing figures derived by NSAI from Music Row Magazine Publisher’s Edition - 2000 to 2014.) (emphasis added)

Attached are Exhibits F thru Z9 documenting the loss of historic music studios. Nowadays, when you hear the word “studio” on Music

Row you are more likely to think the speaker is referring to an expensive “studio” apartment or yoga “studio” — not a recording studio.

GEO hopes the Court can get a true sense of how small Music Row actually is and to think it went from 3 to 4,000 publishing deals to 3 to 400, that 90% loss in songwriters and independent publishers must be caused by something.

Other American copyright creators like painters, book authors, illustrators and photographers are not compelled to work for free under a compulsory license.

This loss of creators on Music Row is attributable to streaming rates intentionally being set at \$.000 cents per-stream in *Phonorecords I* 2008, which resulted in the cannibalization of 9.1 mechanical sales by streaming performances, and the CRB allowing unlimited free limited downloads.

To add insult to injury, *Phonorecords III* all but eliminates this 9.1 cent mechanical royalty. Under the ruling below (but it was not just confined to the ruling given the proposals of various parties), a mechanical license has been transmuted from a 9.1-cent sale into a \$.000 performance.

That’s gold for the Services. It’s penury for the songwriters. It’s nowhere close to what songwriters would charge in a free market.

SUMMARY OF THE ARGUMENTS

A. Judges declined to consider GEO's non frivolous Subpart A inflation argument.

B. Judges declined to consider GEO's non frivolous free limited download argument.

C. Judges declined to consider GEO's BUY button

D. The application of the Copyright Act by the Judges to the facts of this case resulted in a continuing faulty rate structure that is so low that it deprives GEO of his labor and rights.

ARGUMENT

Issues I and II can be solved fairly easily since they are self-evident. While some administrative appeals request rehearing in front of the CRJ's for certain issues, GEO respectfully asks the Court to Determine the neglected *inflation* and *limited download* issues by A.) adjusting Subpart A from 9.1 cents to around \$.50 cents per sale and B.) abolish the free song give away without a sale in the form of the limited download. I hope both of these issues are within the Court's authority to correct these past mistakes.

A.) **Adjust Subpart A for Lost Inflation** — Adjust the 9.1 cent mechanical rate, for 69 years of unrecognized inflation⁶ from 1909 to 1978 which is self-evident⁷ and easily calculated by any government economist. The CRB erred by not adjusting the rate to 2019 standards. Additionally, the 9.1 cent rate set in 2006 has not been raised for inflation, or any other reason, in *Phonorecords I, II, or III*. Since this is an administrative appeal and the courts consider copyright a public right, we pray the Court can immediately factor in lost inflation by using government inflation numbers at the Bureau of Labor Statistics or St. Louis Federal Reserve and make a final determination.

Even Appellant NMPA says the 9.1 cent should be 50 cents in 2019. "At that time (1909), the rate was two cents. Now it is only nine cents. Adjusted for inflation it should be 50 cents today. This is the result of government interference."⁸

⁶ <https://data.bls.gov/cgi-bin/cpicalc.pl> Government inflation calculator

⁷ <https://www.copyright.gov/licensing/m200a.pdf>

⁸ David Israelite, Forbes, March 18, 2016

B.) **Abolish Limited Downloads** — Abolish the Subpart B and C “limited download” without first purchasing the sale since 1.) streaming substituted for the sale and because 2.) Congress never authorized nor intended for the CRB nor its participants to give away §115 copyrights.

GEO respectfully asks the Court to immediately abolish the *limited download* by striking it from 37 CFR §385 Subparts B and C. We believe the Court has that authority to do this and pray they will.

In other words, how can the CRB lawfully give away a free reproduction or distribute a free download (or lost sale) without compensation to the copyright owners? (*See* § 385.31(a)(b)(c) & (d))

C.) Adopt a BUY Button - GEO’s rate structure

Since the stream substituted for the sale, *merge the sale and the stream. Charge the customer* like every other normal product, like the record business used to before NMPA and DiMA changed the definition of *mechanical* from a *sale* to a *performance* at \$.00 cents.

The irony is the CRB says they can’t force a BUY button because Congress would have to pass a new compulsory license for song sales, yet the CRB has the power to give away sales via the limited download.

GEO’s BUY button takes into account the rate structure mistakes made by NMPA, DiMA and RIAA in *Phonorecords I*.

D.) Repair *Phonorecords* I faulty rate structure by DiMA/NMPA

This rate structure created by NMPA, RIAA and Google/DiMA is the problem since it's based on a faulty business model for streaming.

If possible, GEO respectfully asks the Court to re-design this one sided rate structure to actually conform to the 801(b) standard where it equally represents the business models of songwriters and independent publishers instead of just Licensees.

Common sense says a customer should pay for a product and the costs of good sold. *The customer needs added back into the equation* where they buy the song or the album for a few dollars, then stream all they want at the nano-penny rate - that is the solution.

While GEO's arguments are not those of a polished lawyer, they can be recast and distilled as legal arguments, which is the purpose of this Brief. *See, e.g., Macklin v. Spector Freight Sys.*, 156 U.S. App. D.C. 69, 78, 478 F.2d 979, 988 (D.C. Cir. 1973) ("It should be remembered that the jurisdictional requirements we are applying here are not aimed at polished lawyers' pleadings, but rather at charges brought, initially, by laymen usually unassisted by attorneys. Thus it makes sense, in our view, to avoid reading them as Baron Parke might have, but rather to read them with considerably more latitude and with weight to the construction given them by the Commission in the matters it proceeds to investigate." (citation omitted)), *disapproved on other grounds by Johnson v. Ry. Express Agency*, 421 U.S. 454 (1975).

CONCLUSION

Accordingly, the Determination of the CRB Judges should be reversed, with the Court either determining GEO's A.) Subpart A inflation and B.) abolishing limited downloads issues or directions to conduct an additional hearing at which GEO shall be permitted to submit additional testimony and other evidence.

Respectfully submitted,

/s/ George D. Johnson

George D. Johnson ("GEO")

PO Box 22091

Nashville, TN 37202

(615) 242-9999

george@georgejohnson.com

Pro Se Songwriter & Publisher

d/b/a George Johnson Music

Publishing ("GJMP")

Date: August 14, 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a). I certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font. I further certify that, according to the count of Apple Pages and excluding the parts of the brief exempted under Fed. R. App. P. 32(f), this brief contains 2,999 words, which is within the limit of 3,000 words specified in the order issued by this Court on June 25th, 2018.

/s/ George Johnson
George Johnson, pro se

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-1028Caption: George Johnsonv. Library of Congress and Copyright Royalty JudgesCERTIFICATE OF COMPLIANCE WITH RULE 28.1(e) or
32(a)Type-Volume Limitation, Typeface Requirements, and Type Style
Requirements

1. **Type-Volume Limitation:** Appellant=s Opening Brief, Appellee=s Response Brief, and Appellant=s Response/Reply Brief may not exceed 14,000 words or 1,300 lines. Appellee=s Opening/Response Brief may not exceed 16,500 words or 1,500 lines. Any Reply or Amicus Brief may not exceed 7,000 words or 650 lines. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include footnotes in the count. Line count is used only with monospaced type.

This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e) (2) or 32(a)(7)(B) because:

[X] this brief contains 2,999 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

[] this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B) (iii).

2. **Typeface and Type Style Requirements:** A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 102 characters per inch).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

[X] [this brief has been prepared in a proportionally spaced typeface using Pages for Mac in Century Schoolbook 14 point; *or*

[] this brief has been prepared in a monospaced typeface using **[identify word processing program]** in *[identify font size and type style]*.

(s) George Johnson, Pro Se

Dated: August 14, 2019

CERTIFICATE OF SERVICE

Pursuant to Rules 15(c), 25(c), and 25(d) of the Federal Rules of Appellate I hereby certify that on August 14, 2019, I mailed and electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by USPS and by using the appellate CM/ECF system. The following participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ George Johnson

George Johnson, pro se

Donald S. Zakarin
Frank P. Scibilia
Benjamin K. Semel
PRYOR CASHMAN LLP
7 Times Square
New York, New York 10036
Telephone: (212) 421-4100
Facsimile: (212) 326-0806
dzakarin@pryorcashman.com
fscibilia@pryorcashman.com
bsemel@pryorcashman.com

*Counsel for Appellants-Intervenors
National Music Publishers Association
and Nashville Songwriters' Association
International (No. 19-1062)*

George D. Johnson, Pro Se
d/b/a George Johnson Music Publishing
P.O. Box 22091
Nashville, Tennessee 37202
Telephone: (615) 242-9999
george@georgejohnson.com

*George D. Johnson ("GEO"), Pro Se,
an individual author, songwriter, and
independent music publisher d/b/a
George Johnson Music Publishing
(formerly BMI) (No. 19-1028)*

Kenneth L. Steinthal
Jeffrey S. Bucholtz
David P. Mattern
Jason Blake Cunningham
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
ksteinthal@kslaw.com
jbucholtz@kslaw.com
dmattern@kslaw.com
bcunningham@kslaw.com

*Counsel for Appellant-Intervenor
Google LLC (No. 19-1058)*

Mark R. Freeman
Jennifer L. Utrecht
Attorneys, Appellate Staff
Civil Division, Room 7710
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 353-9039
mark.freeman2@usdoj.gov
jennifer.l.utrecht@usdoj.gov

*Counsel for Appellees
Copyright Royalty Board
and Library of Congress*

Andrew J. Pincus
Jonathan Weinberg
MAYER BROWN LLP
1999 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 263-3220
Facsimile: (202) 263-5220
apincus@mayerbrown.com
jweinberg@mayerbrown.com

A. John P. Mancini
MAYER BROWN LLP
1221 Avenue of the Americas
New York, N.Y. 10020
Telephone: (212) 506-2500
Facsimile: (212) 262-1910
jmancini@mayerbrown.com

*Counsel for Appellant-Intervenor
Spotify USA Inc. (No. 19-1059)*

Kannon K. Shanmugam
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K. St. N.W.
Washington, DC 20006
Telephone: (202) 223-7300
Facsimile: (202) 223-7420
kshanmugam@paulweiss.com

*Counsel for Appellants-Intervenors
National Music Publishers Association
and Nashville Songwriters' Association
International (No. 19-1062)*

Benjamin E. Marks
Gregory Silbert
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
benjamin.marks@weil.com
gregory.silbert@weil.com

*Counsel for Appellant-Intervenor
Pandora Media, LLC (No. 19-1060)*

Scott H. Angstreich
Leslie V. Pope
Rachel Proctor May
Julius P. Taranto
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
sangstreich@kellogghansen.com
lpope@kellogghansen.com
rmay@kellogghansen.com
jtaranto@kellogghansen.com

*Counsel for Appellant-Intervenor
Amazon Digital Services LLC
(No. 19-1061)*

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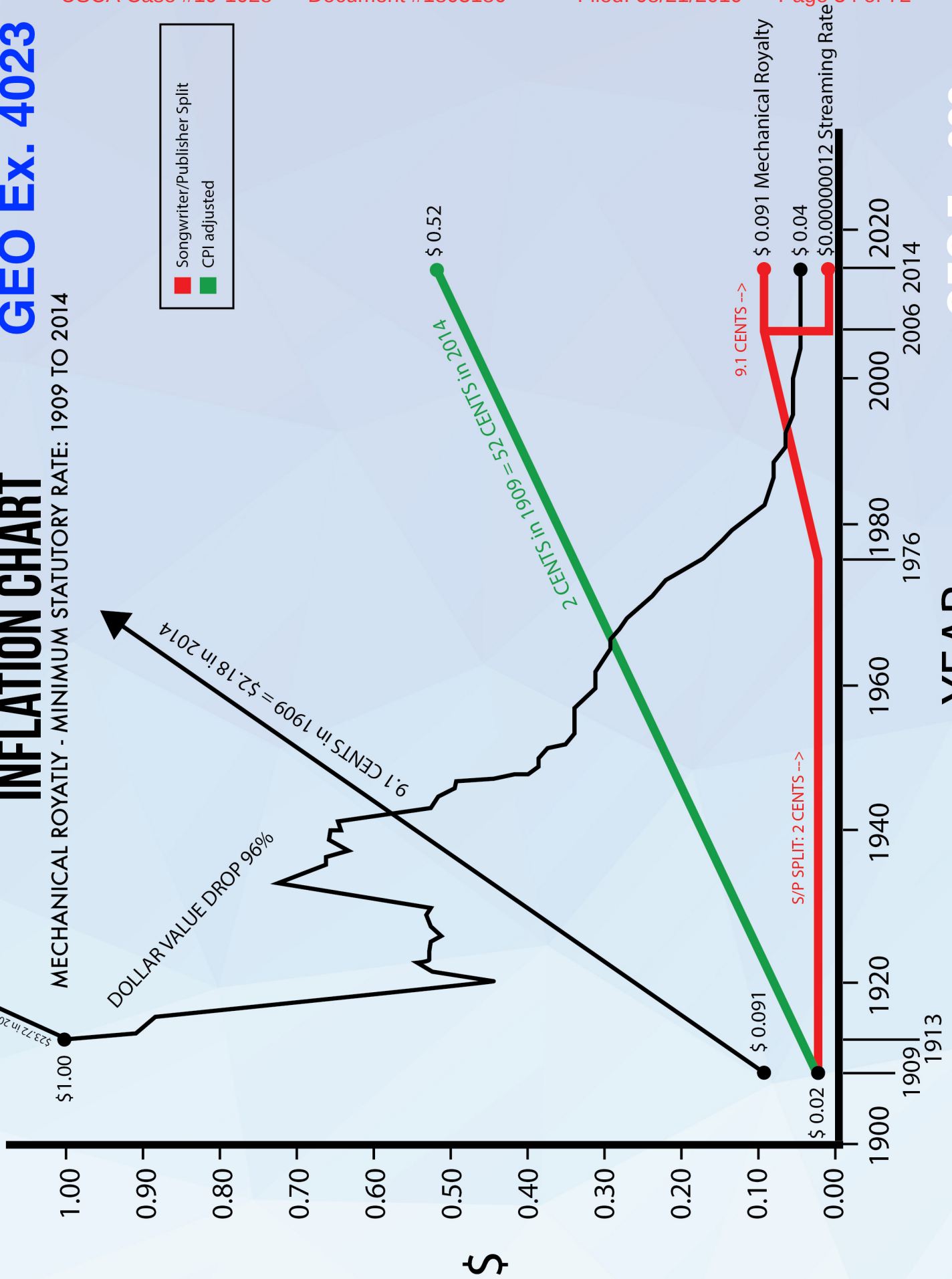
Exhibit A**INFLATION CHART****GEO Ex. 4023**

MECHANICAL ROYALTY - MINIMUM STATUTORY RATE: 1909 TO 2014

DOLLAR VALUE DROP 96%

9.1 CENTS in 1909 = \$2.18 in 2014

2 CENTS in 1909 = 52 CENTS in 2014

**GEO Ex. 023****SU**

The Music Industry Has Had a Checkered Past. But Now Here Comes the Sun, Streaming In

Exhibit B

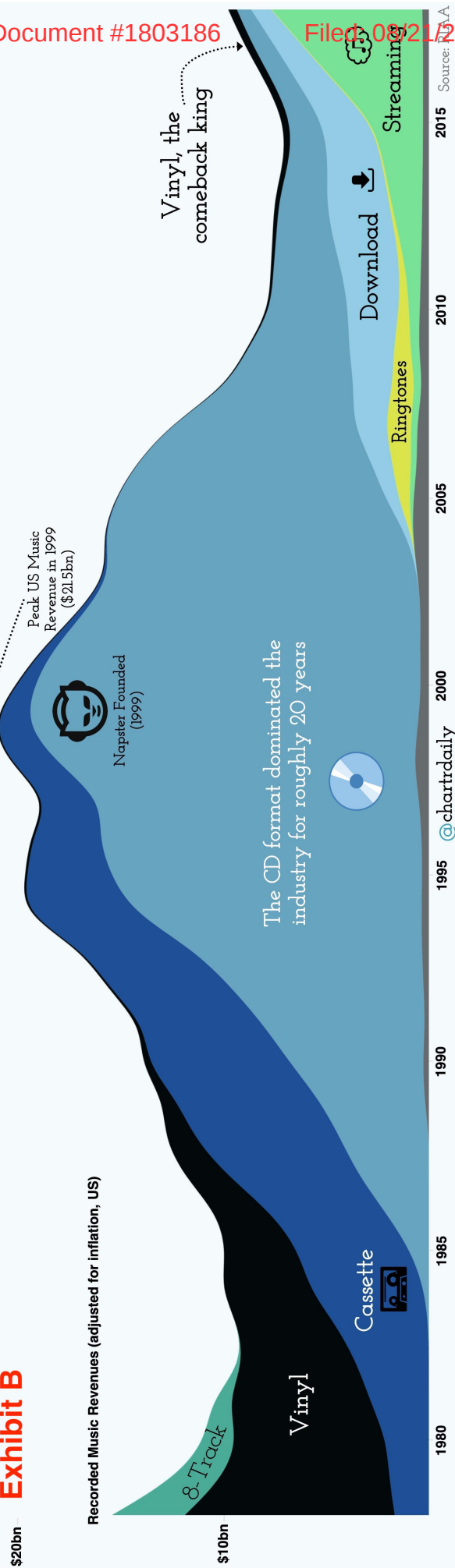


Exhibit D**AVERAGE PRICE of a SINGLE, 1974-2014**

ALL \$ IN 2015 U.S. DOLLARS
SOURCE RIAA

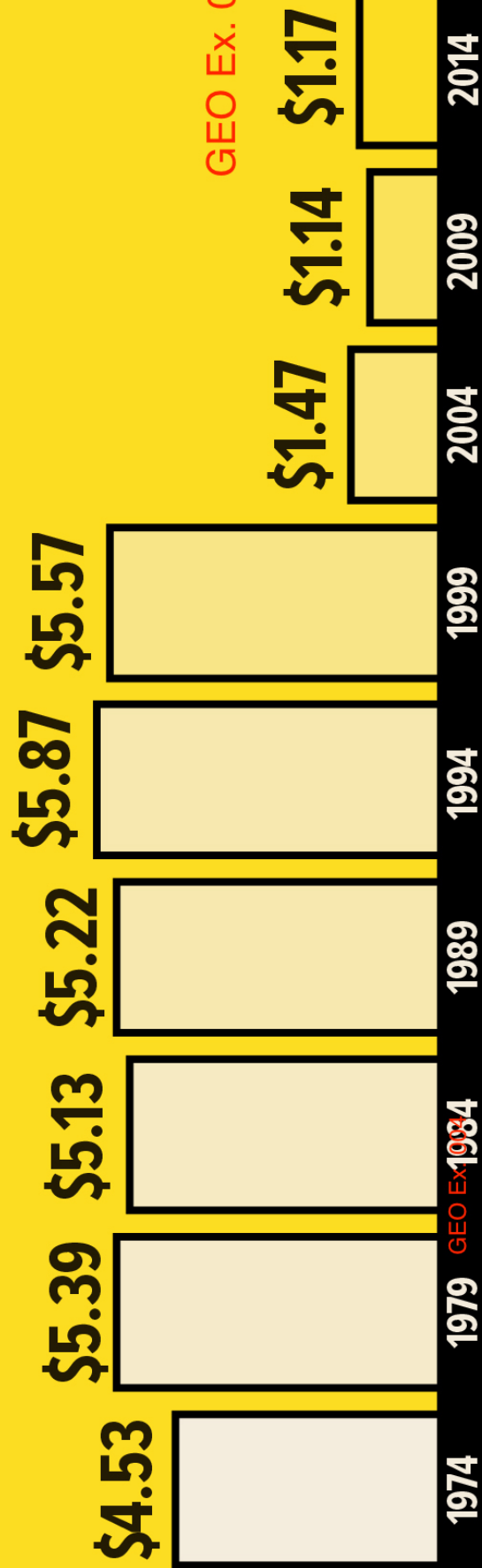


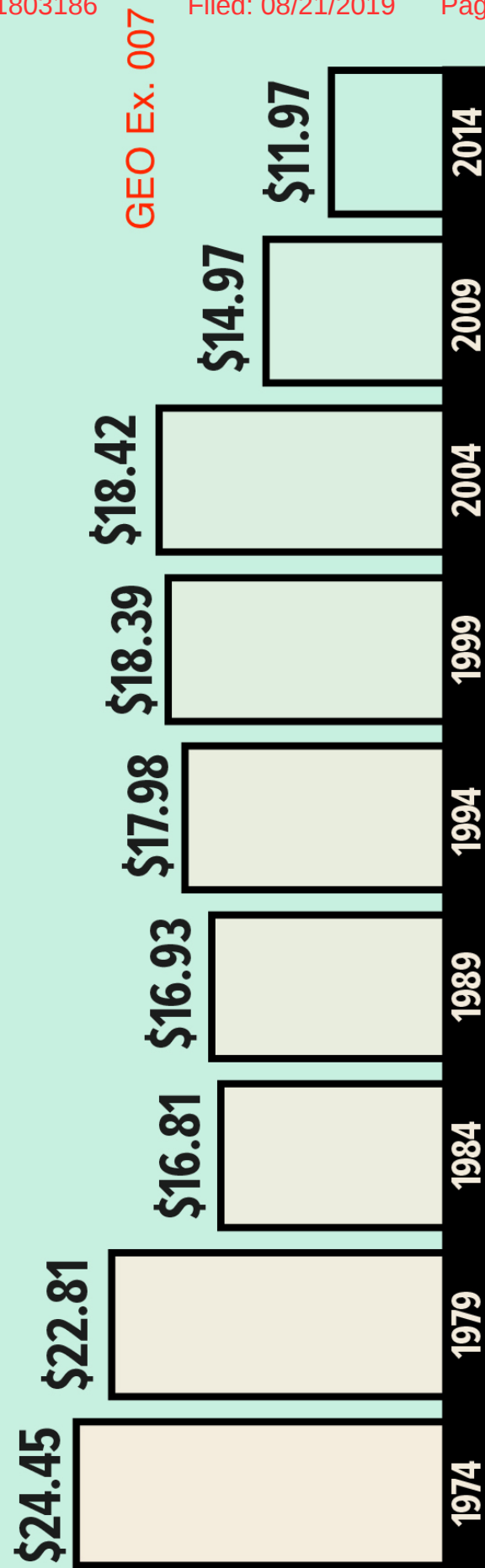
Exhibit E

Exhibit F

NVFO61016-06/10/58-NASHVILLE:Pvt. Elvis Presley tips his cap to newsmen as he enters a local recording studio. Elvis is in town for a few recordings while he is on leave from the Army. UPI TELEPHOTO



Exhibit G - 2019



Exhibit H



Exhibit I - Studio B

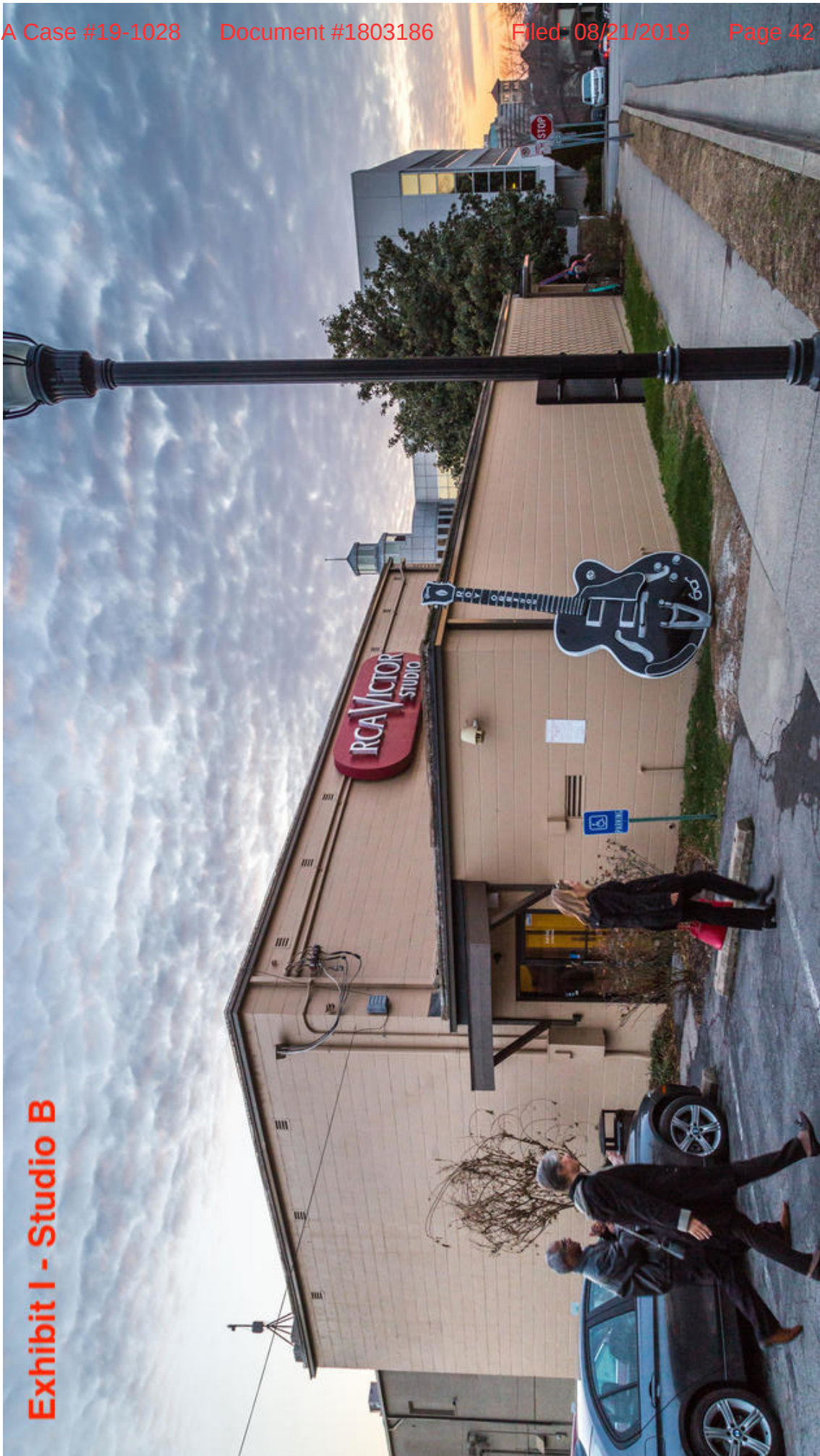


Exhibit J - RCA Studio A almost torn down

Will Nashville's Runaway Growth Kill Music Row?

[Regina Cole](#)



Historic RCA Victor Recording Studios on Music Row in Nashville. Elvis Presley, Dolly Parton and many others recorded here at one time.

Getty

You don't have to be a statistician to know that Nashville, Tennessee, is booming. Cranes dominate the skyline and, every day, about 100 people move to the region. Visitors to the city have swelled from 2 million a year in 1998 to 15.2 million visitors in 2018. Not long ago, the city's Department of Public Works commissioned a study to measure the foot traffic along Lower

Broadway and on First Avenue on a typical Thursday and Saturday. Planners were shocked to discover that the number of pedestrians using those streets was comparable to foot traffic in Times Square.

If those statistics don't paint a crowded enough picture, just try to negotiate traffic on I-40 at rush hour.

The supreme irony of Nashville's mushrooming growth is that it endangers the historic center of the city's music industry. "Music Row," a one-square-mile neighborhood housing countless music writing, publishing, production and recording enterprises, plus their attendant businesses, is next to downtown, where there is no more space for glassy towers. Thus, developers eye the small buildings between 16th and 19th Avenues.

"It's called 'Music City' for a reason," says Pam Lewis, president and CEO of [PLA Media](#), a public relations, marketing and music tourism company located on 16th Ave., in the heart of Music Row.

"According to a 2013 economic impact study done by the mayor's office, the Nashville music industry employed almost 60,000 people and produced \$3.2 billion in job income annually," she says.

"The density of the Nashville music industry is 20 to 30 times greater than that in the two other primary music centers, Los Angeles and New York. There are 800 annual festivals featuring music throughout Tennessee. Simply put, we are the only industry which brands the state internationally."

Nashville became Music City early: In 1819 it housed the country's first music publishing company. Fame accrued when the [Fisk Jubilee Singers](#) wowed international audiences, including Queen Victoria. In 1925, a country music juggernaut was launched by Nashville radio station [WSM-AM](#) when it broadcast [The Grand Ole Opry](#). Today, the Opry is America's longest-

running radio show. Music is Nashville's rhythmically beating heart, and Music Row is the neighborhood where it is at home.

"This is a social sport," says songwriter and producer [Trey Bruce](#). "We all walk to each other's offices and work together. Much as the industry changes, we still have to create music together."

The result, he says, is "an accidental cultural district."

"It started to be developed in the late 19th century, and after World War II, attracted music people with its cheap office space," explains Carolyn Brackett, a senior field officer with the [National Trust for Historic Preservation](#). For four years, she has worked with local individuals and organizations to try to save Music Row's buildings from the bulldozer.

"Bungalows were repurposed and new buildings erected for the music business," Brackett says. "But it was still a neighborhood, or a campus. It is what a lot of cities want to have. But, in five years, we have lost 45 buildings in Music Row."

One of the challenges to Music Row is that it does not fit historic district definitions; the eclectic neighborhood encompasses many types and styles of buildings.

"The National Trust has placed Music Row on its list of 'National Treasures,' which identifies endangered significant historic places," Brackett says.

"Three-fourths of Music Row has no protection of any kind. We need new tools that are incentive-based so that Nashville can continue to have this incubator of affordable space."

"New music publishing companies are coming to Nashville every day," Trey Bruce says. "We need a preservation plan and a new designation, a 'Cultural

Business District."

[RCA Studio A](#) is one of Music Row's rare success stories. The legendary recording studio was slated for demolition in 2014, when a group of citizens bought it. It continues to function as a recording studio today.

"Twelve of the songs up for Grammys this year were recorded there," Brackett says.

"Music is an emotional experience," says Bruce. "If you have goosebumps because you're recording where Dolly Parton made records, you're going to sing differently."

Pam Lewis points to Bill Miller of [Icon Entertainment](#) for another example of how historic preservation helps Nashville.

"He rehabbed historic buildings downtown on 3rd, Printer's Alley and Broadway for his numerous attractions, which include [Nudie's](#), [Skull's](#), the [Patsy Cline Museum](#), the [Johnny Cash Museum](#) and [House of Cards](#). This is compelling proof that commerce can prevail," she says. "You can make money and save historic resources."



Exhibit K

Exhibit L





Exhibit M

Exhibit N



Exhibit O



Exhibit P

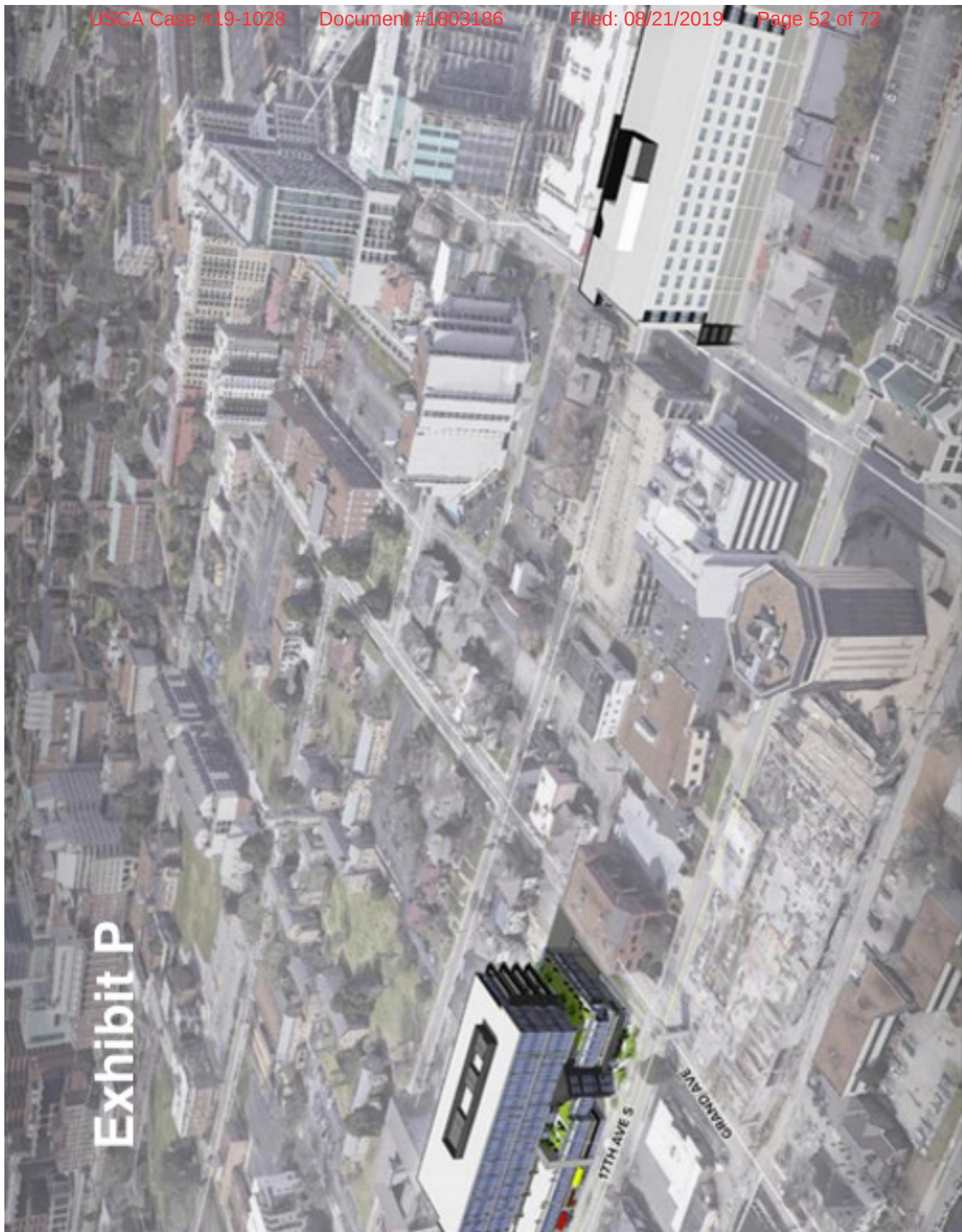




Exhibit Q

Exhibit R

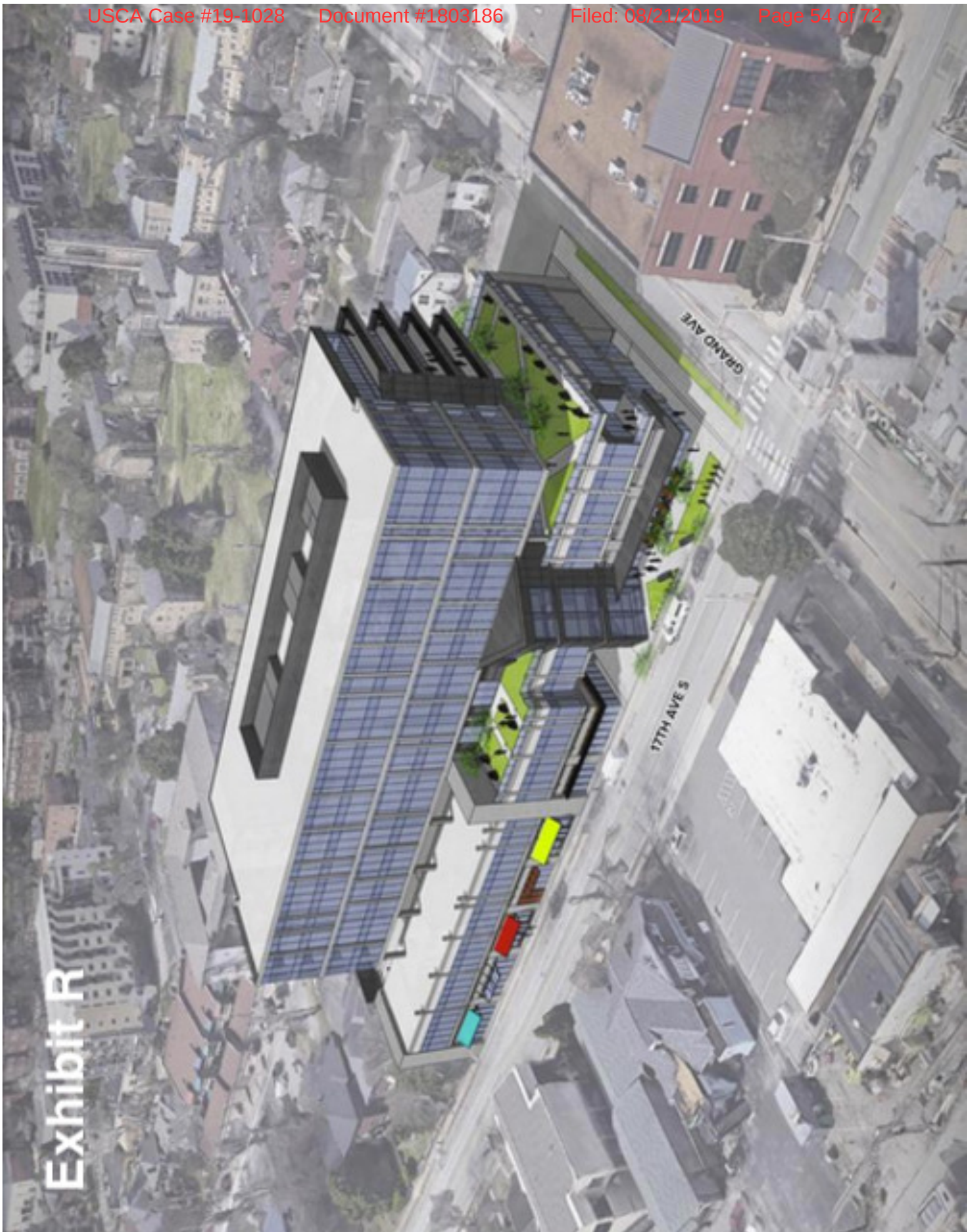


Exhibit S

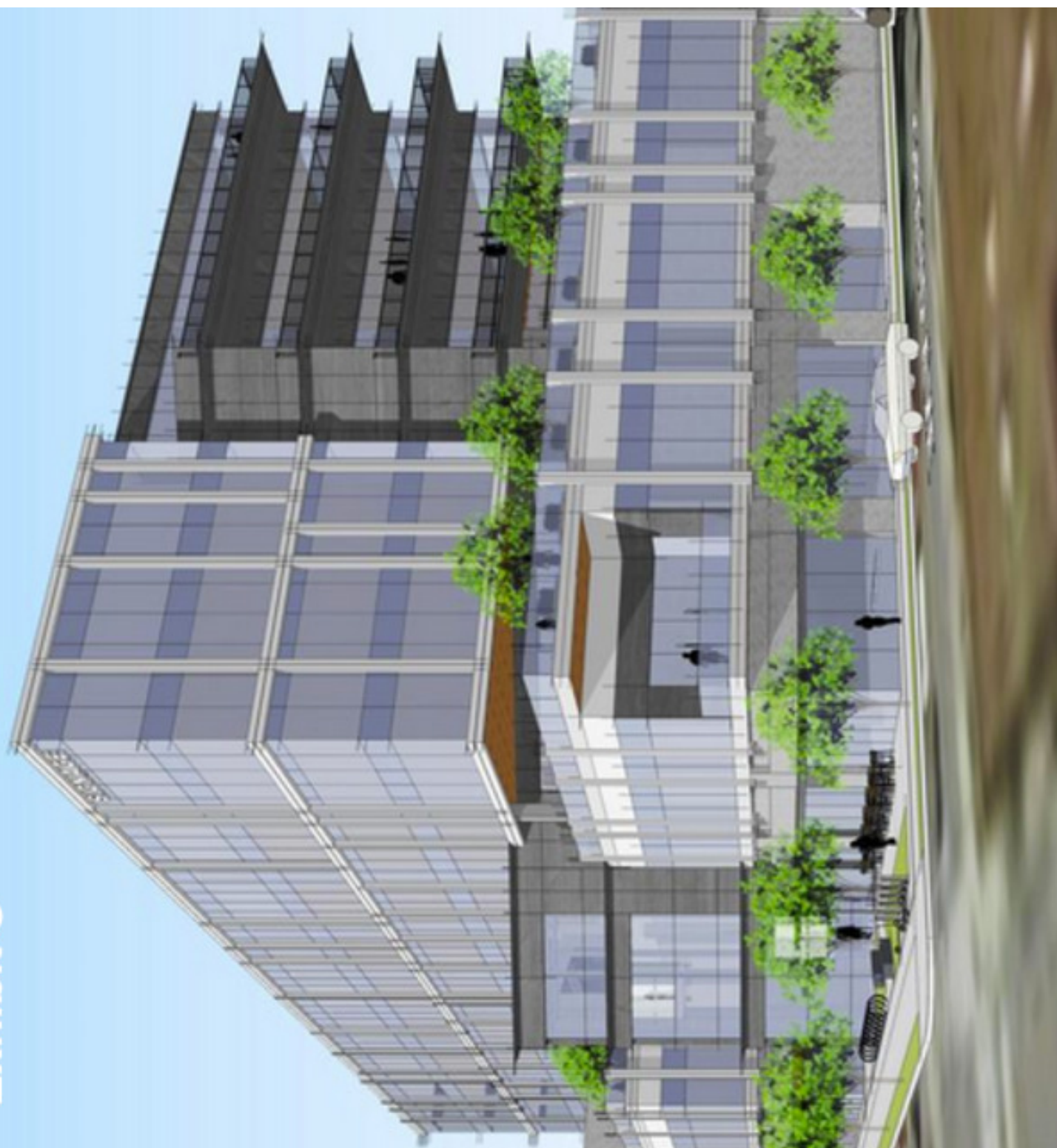






Exhibit V

FOR SALE

1.26 Acres Music Row
Multi-Parcel Tract

Sheri C. Smith
615.347.4110
Broker

Zettlin Sothebys
INTERNATIONAL REALTY

Parcel	1001	1002	1003	1004	1005
1001	1002	1003	1004	1005	1006

3735 Ave South



Exhibit W



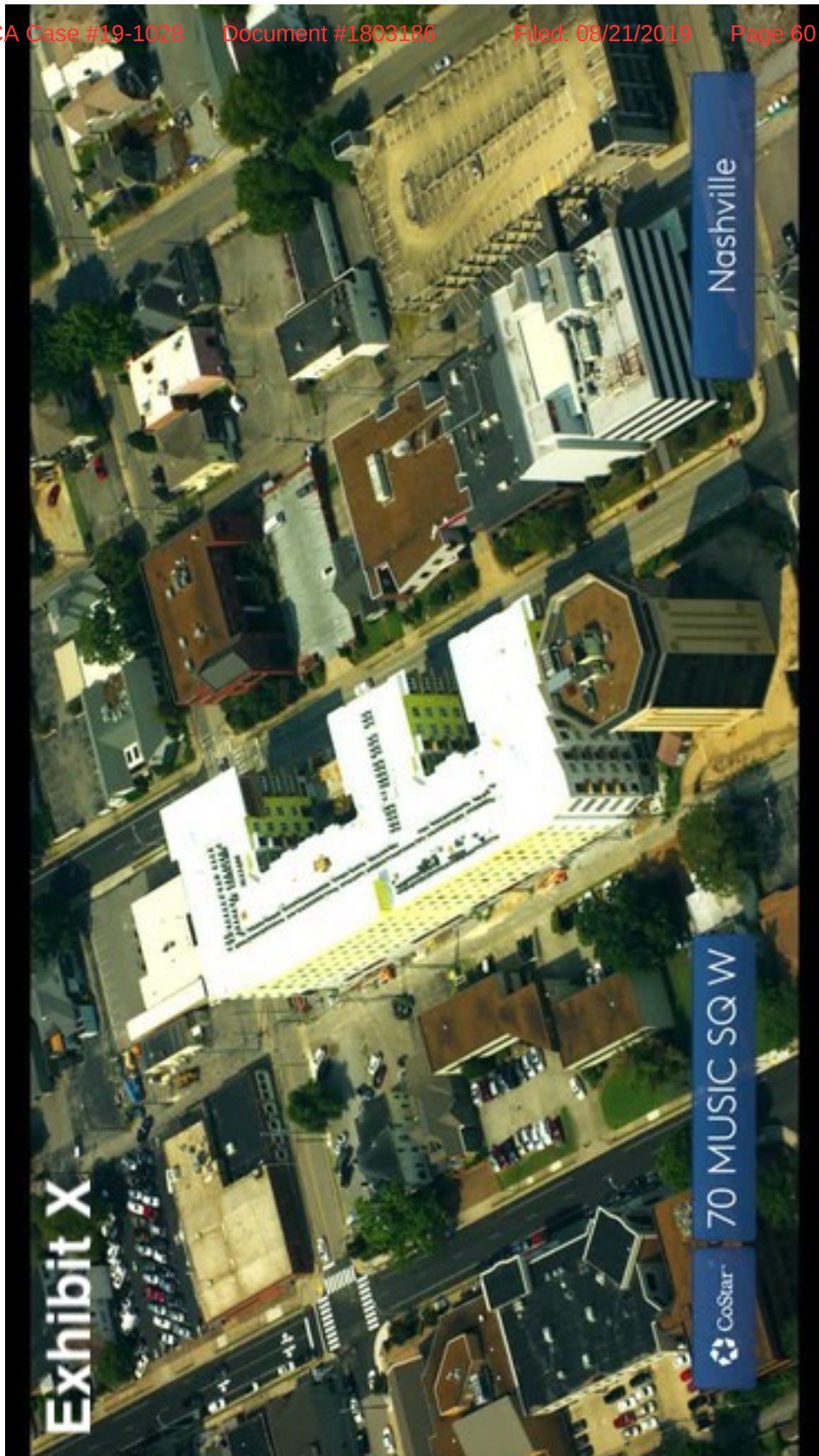




Exhibit Y

Exhibit Z



Historic Nashville, Inc.

· October 5, 2015 · Edited

The 19-story "M Residences" mixed-use highrise will replace 5 vintage buildings at 19th Avenue South and Chet Atkins Place, including a 115-year old house converted into a music recording studio, on Nashville's historic Music Row.



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Exhibit Z1

Exhibit Z2

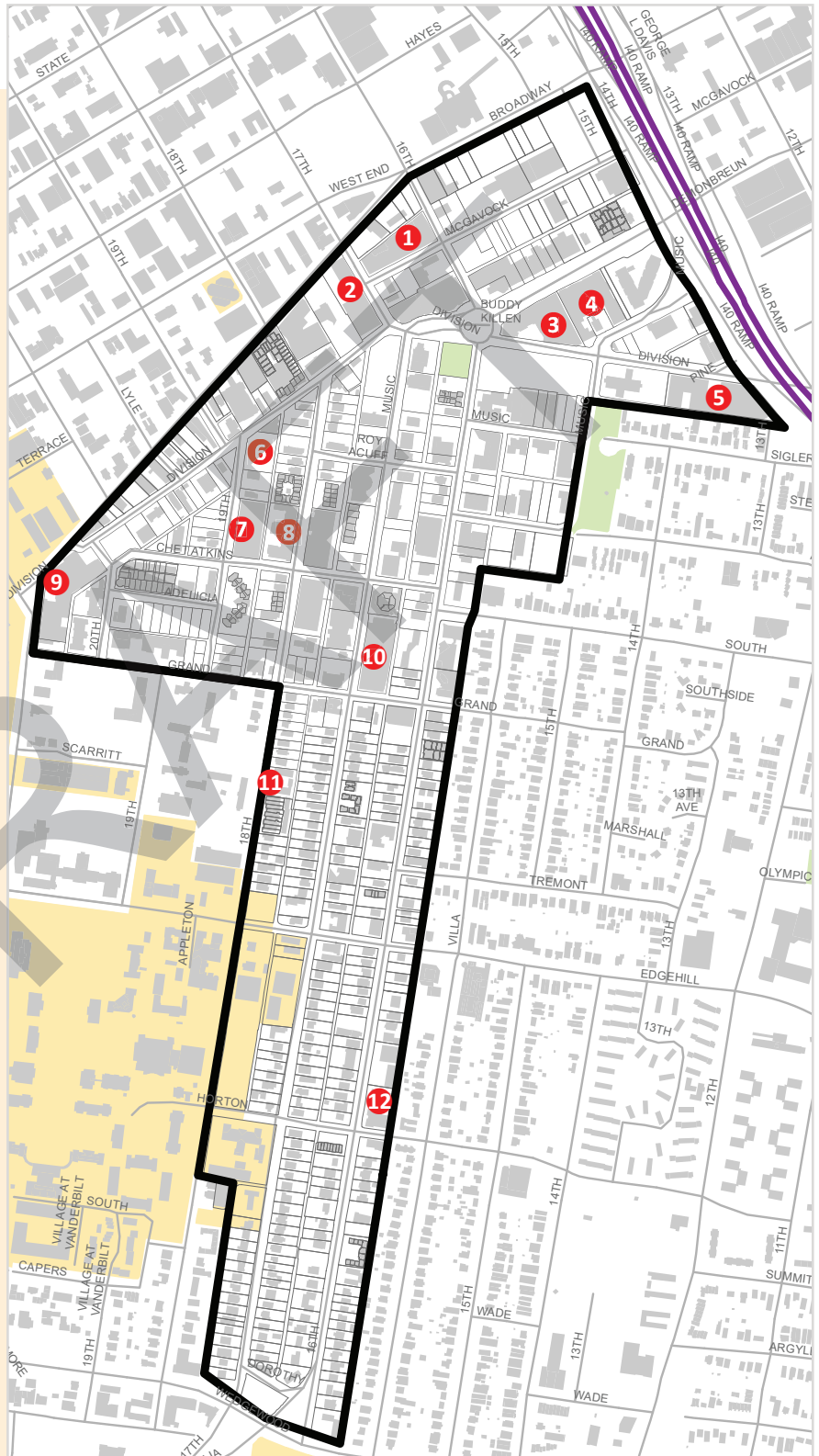
PRESSURES

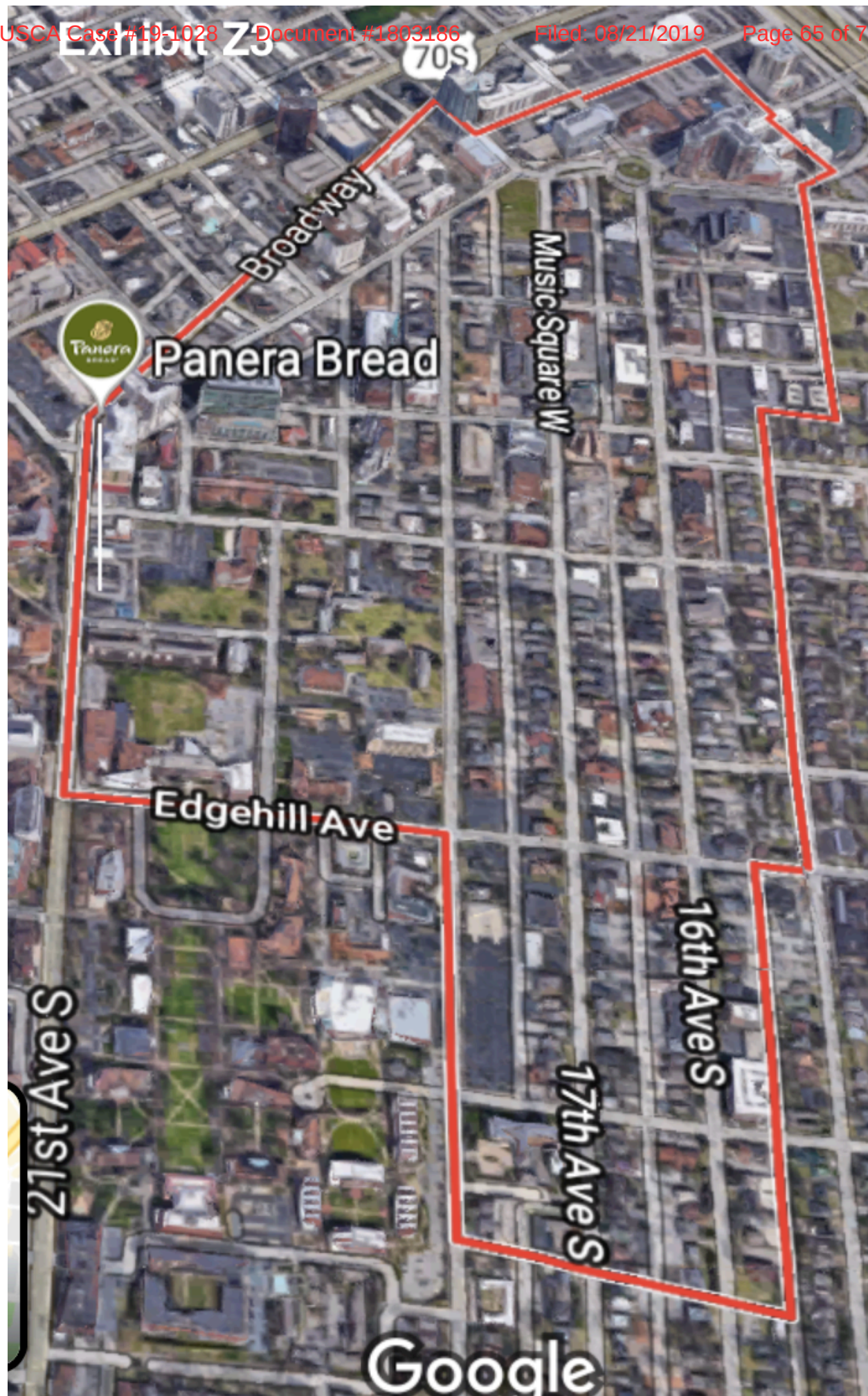
Multi-family development built on Music Row since 2010

- 1 The Cadence
190 units. 2016.
- 2 Skyhouse Nashville
352 units. 2017.
- 3 Element Music Row
413 units. 2016.
- 4 1505 Demonbreun
209 units. 2016.
- 5 Infinity Music Row
275 units. 2017.
- 6 Kenect
420 units. Q4 2019.
- 7 The Morris
344 units. 2017.
- 8 The Artisan
153 units. 2014.
- 9 Aertson Midtown
524 units. 2016.
- 10 Millennium
230 units. 2017.
- 11 Midtown Place
60 units. 2012.
- 12 Note 16
86 units. 2013.

3,274

number of residential units
added to Music Row between
2008-18





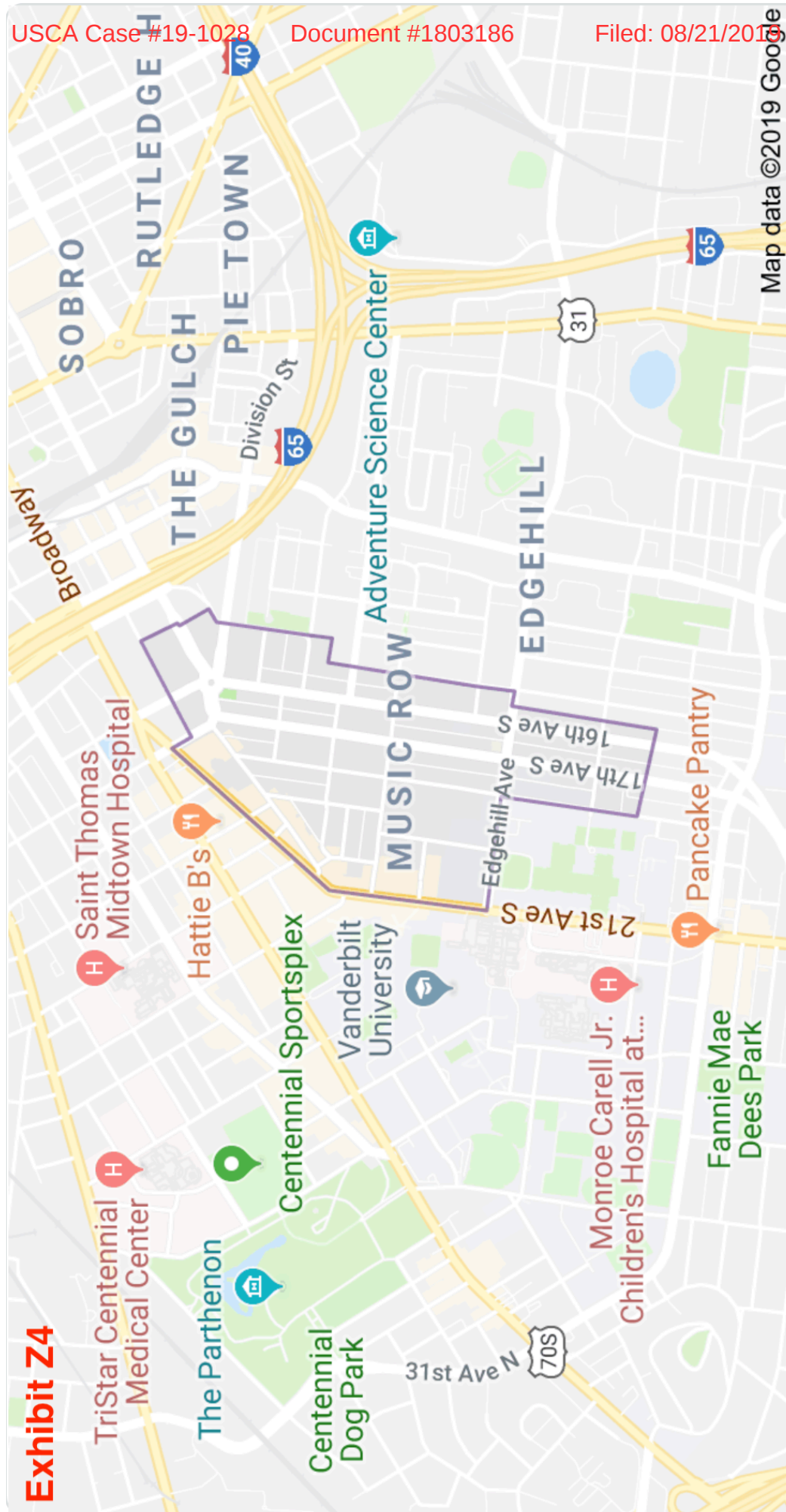
**Exhibit Z4****Music Row****Nashville, TN**

Exhibit Z5



PRESSURES

Intrusion of Multifamily

Recent multi-family development on Music Row has significantly degraded the vibrant creative cluster. From 2010 to 2019, 3,274 residential units have been constructed in the area. Large-scale apartments, flats, and luxury condos exacerbate the infrastructure and affordability obstacles already constricting the creative cluster. For the purposes of this plan, “large-scale multi-family residential development” is defined as any development located on development sites greater than ½-acre, containing more than 20 residential units, and regarded as the primary use on the site. The imminent arrival of new corporate relocations with 6,000 jobs in Downtown Nashville will drive continued pressure for housing near the urban core.

Multi-family intrusion reduces opportunities for music-related businesses within the district by impacting affordability. Additionally, conflicts arise between residents and business uses, specifically the watering holes and ‘third places’ crucial to Music Row’s atmosphere.

Residential development on Music Row



Multifamily development along 18th Avenue South

Exhibit Z7

MOVING TO BERRY HILL

Several companies have moved away from Music Row, citing rising property taxes due to new developments, to areas such as Berry Hill, where property values are one-eighth the price per acre, according to officials.



30+

Music industry-related businesses operate in Berry Hill

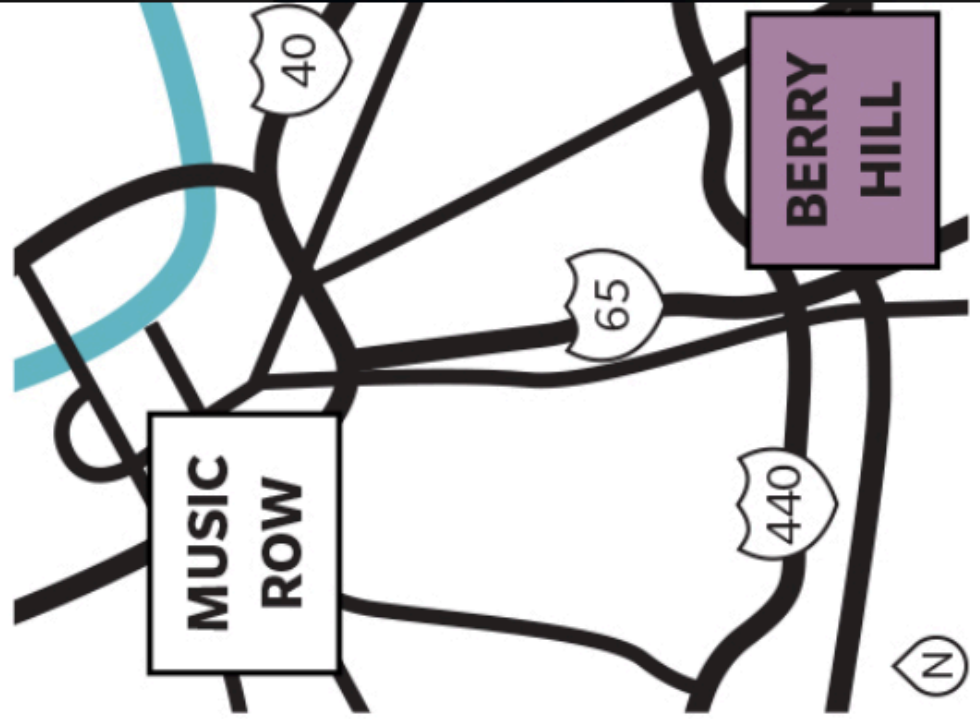


Exhibit Z8

Music Row awarded gloomy recognition: One of America's most endangered historic landmarks

[Sandy Mazza](#) Updated 10:05 a.m. CT May 31, 2019



11 Photos

Nashville Nine most endangered properties for 2018

Next Slide

Nashville's historic Music Row district has been awarded a grim distinction.

The National Trust for Historic Preservation on Thursday named the streets where Patsy Cline recorded "Crazy" and Dolly Parton laid down "I Will Always Love You" to its 2019 "America's 11 Most Endangered Historic

Places" list.

The designation comes after years of busy high-rise development on the quaint strips of Craftsman-style buildings around 16th and 17th avenues in midtown.

"When we say we've seen 50 demolitions in the last 6 or 7 years, it doesn't sound like a lot," said Carolyn Brackett, senior field officer with the National Trust for Historic Preservation. "But it's been replaced with very large apartment and office buildings that aren't dedicated to the music industry. If that trend continues, Music Row won't be here in 50 years."



Buy Photo

The United Artists Tower, here May 12, 1989, is one of the "signature" buildings on Music Row that has helped the area establish its identity. The building will be repurposed for a boutique hotel that is expected to open in 2020. *(Photo: Jessica Greene / The Tennessean)*

The renowned district helped buoy Nashville to become one of the nation's fastest growing cities.

Exhibit Z9

Nashville's musical middle class collapses

Nate Rau, nrau@tennessean.com

Published 11:10 p.m. CT Jan. 3, 2015 | Updated 2:40 p.m. CT Jan. 28, 2015



(Photo: Samuel M. Simpkins / The Tennessean)

As an independent songwriter, Jim Reilley lives the kind of precarious year-to-year existence that is now typical of Nashville's working music professionals.

At the same time the New Dylans began recording their first album in 18 years, Reilley, the band's co-founder, was waiting to find out whether his publishing deal would be renewed for another year.

A publishing deal essentially pays a songwriter an annual salary to write songs — Reilley writes dozens per year. His publisher hooks him up with other writers for co-writing sessions, pitches his songs to artists and labels and licenses them for television shows or commercials. Last year, a song Reilley co-wrote was licensed to the ABC television show "Nashville."

But despite his successes, in many ways, Reilley's career trajectory makes him the poster child for the troubled state of the music industry in general and the songwriting profession specifically.

As world-renowned artists like Taylor Swift, the Black Keys and Keith Urban have been hoisted up as evidence of Nashville's it-city status, the music industry has actually been in a state of unrelenting decline.

Buy Photo



New Dylans bassist Chris Autry (Photo: Samuel M. Simpkins / The Tennessean)

Since 2000, the number of full-time songwriters in Nashville has fallen by 80 percent, according to the Nashville Songwriters Association International. Album sales plummeted below 4 million in weekly sales in August, which marked a new low point since the industry began tracking data in 1991. Streaming services are increasing in popularity but have been unable to end the spiral.

The result has been the collapse of Nashville's musical middle class — blue-collar songwriters, studio musicians, producers and bands who eke out a living with the same lunch-pail approach that a construction professional brings to a work site. In fawning national publications, Nashville has emerged as a glamorous place populated with music celebrities. But in actuality, making a living at music is a rather gritty chore.

Independent songwriters like Reilley work under pressure-packed year-to-year deals. Professional musicians like Chris Autry, who plays bass for the New