

Heather Dawbarn, Register  
Rutherford County Tennessee  
Rec #: 1138641  
Rec'd: 60.00 Instrument #: 2393245  
State: 0.00  
Clerk: 0.00 Recorded  
Other: 2.00 9/27/2021 at 8:42 AM  
Total: 62.00 in  
Record Book 2145 Pgs 3024-3035

Prepared by and After Recording  
To Be Returned To:

White & Polk, P.C.  
107 W. College St.  
Murfreesboro, Tennessee 37130

## DECLARATION OF ACCESS EASEMENT

THIS DECLARATION OF ACCESS EASEMENT (this "Easement") is made this 23  
day of September, 2021, by VESTER WALDRON FAMILY LIMITED PARTNERSHIP, a Tennessee  
limited partnership (hereinafter referred to as "Declarant").

### WITNESSETH

WHEREAS, Declarant is the fee simple owner of that certain real property situated in the Town  
of Smyrna, Rutherford County, Tennessee, consisting of "Lot 4, Lot 4A" and "Lot 4B" and more  
particularly described in Exhibit "A"; and

WHEREAS, Declarant intends to convey Lot 4, Lot 4A and Lot 4B to a third party, and in  
contemplation thereof, desires to create and establish an access easement benefitting Lot 4, Lot 4A and Lot  
4B and burdening Lot 4, Lot 4A and Lot 4B as provided in this Easement.

NOW, THEREFORE, in consideration of the premises and provisions hereof, Declarant hereby  
declares that Lot 4, Lot 4A and Lot 4B shall be and is hereby encumbered by and made subject to the  
easements and reservations hereinafter set forth, to wit:

### ARTICLE 1 DEFINITIONS

For purposes of this Easement, the following terms shall have the definitions and meanings as  
hereinafter set forth:

1.1 ACCESS DRIVE shall mean generally those driveways and curb-cuts to be constructed  
within in the area labeled the "30' Ingress/Egress Easement" (the "Access Drive") as shown on Exhibit "B"  
attached hereto (the "Site Plan") as more particularly described on Exhibit "C"

1.2 OCCUPANT shall mean and refer to any person or organization which has occupied,  
purchased, leased, rented or is otherwise licensed or legally entitled to occupy or use any Parcel of land on  
Lot 4, Lot 4A or 4B (whether or not such right is exercised), as well as their respective successors and/or  
assigns.

1.3 OWNER shall mean and refer to one or more persons or entities who or which are alone or  
collectively the record owner of fee simple title to any Parcel of land within Lot 4, Lot 4A or 4B, including,  
without limitation, the Declarant, and all of their respective Occupants, tenants, lessees, and their successors  
and/or assigns.

1.4 PARCEL OR LOT shall mean and refer to Lot 4, Lot 4A and/or Lot 4B, together with any  
and all improvements thereon or that shall be subdivided by an Owner in accordance with and approved by  
the Smyrna Municipal Planning Commission. The terms "Parcel" and "Lot" may be used interchangeably.

## **ARTICLE 2**

### **EFFECT OF EASEMENT**

**2.1 COVENANTS RUNNING WITH LAND.** This Easement and each and every one of the easements and reservations contained herein are hereby declared to be, and shall hereafter continue as, covenants running with the title to those portions of Lot 4, Lot 4A and 4B upon which the same are hereby imposed as an encumbrance.

**2.2 PROPERTY AFFECTED.** This Easement and the easements, covenants, conditions, restrictions and reservations set forth herein shall be binding upon, inure to the benefit of and constitute a burden and benefit upon all of Lot 4, Lot 4A and Lot 4B in accordance with the terms set forth herein. Accordingly, as more particularly specified in this Easement all Parcels of land within Lot 4, Lot 4A and Lot 4B shall hereafter be owned, held, transferred, sold, conveyed, demised, devised, assigned, leased, mortgaged, occupied, used and enjoyed subject to and benefited and burdened by the terms and provisions of this Easement and each of the easements and reservations contained herein.

**2.3 PARTIES AFFECTED.** Except as hereinafter specifically provided, this Easement shall be binding upon and inure to the benefit of all Owners of Lot 4, Lot 4A and Lot 4B, including, without limitation, the Declarant, and all other persons having or claiming any right, title or interest in such property. Accordingly, each and every person or party who or which shall hereafter acquire, have or claim any right, title or interest in any Parcel of land within Lot 4, Lot 4A or Lot 4B, whether by, through or under the Declarant or any subsequent Owner, shall, by virtue of the acceptance of any such right, title, interest or claim, whether by deed or other instrument, or by operation of law or otherwise, and whether voluntarily or involuntarily, be deemed to have acquired and accepted such right, title, interest or claim in or to any Parcel of Lot 4, Lot 4A and 4B subject to and benefited and burdened by the easements, covenants, conditions, restrictions and reservations set forth in this Easement.

## **ARTICLE 3**

### **ACCESS; PARKING**

**3.1 ACCESS EASEMENTS.** Declarant hereby declares and creates, for the benefit of the Owners and their tenants, occupants, customers or invitees, of all or any portion of the Lot 4, Lot 4A Lot 4B, a non-exclusive and perpetual easement for pedestrian and vehicular (including without limitation tractor trailer delivery trucks) ingress, egress and access in common with others, over, upon and across the Access Drive located within Lot 4, Lot 4A and Lot 4B.

**3.2 MAINTENANCE OF ACCESS DRIVES.** Each Parcel Owner shall be obligated to maintain the Access Drive located on their respective Parcel in first-class, good, clean condition and state of repair, and in strict compliance with all applicable regulations of the Town of Smyrna and as required by The Declaration of Covenants, Conditions and Restrictions for Stonetrace Center filed in Record Book 2097, pages 1471-1492, in the Register's Office of Rutherford County, Tennessee.

**3.3 USE AND MODIFICATION OF ACCESS DRIVES.** Notwithstanding the rights granted in this Article 4, no user of such rights shall interfere with, block, impede or otherwise impair the business operations on any Parcel or any access or traffic flow to or on any Parcel, unless agreed to in a separate written agreement between the Owners owning the Parcels sharing such access areas between such Parcels which are not shown as the Access Drive on Exhibit B. Provided, however, no Owner shall alter, relocate or obstruct access on any portion of the Access Drive without the prior written consent of the other Owners, except (i) in the event of an emergency, (ii) in the event that such Owner, upon the advice of its legal counsel, needs to close such Access Drive to prevent the public from acquiring any rights to same, (iii) for repairs to

such Access Drives, provided a reasonable alternative means of access provided during such period of repair, or (iv) if required by any governmental authority and as required by the Declaration of Covenants, Conditions and Restrictions for Stonetrace Center filed in Record Book 2097, pages 5147-1492, in the Register's Office of Rutherford County, Tennessee.

#### **ARTICLE 4**

##### **BREACH**

**4.1** In the event of a breach or threatened breach of this Easement, Declarants, the Owners, their Occupants, and lessees shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful Party in any action shall pay to the prevailing Party a reasonable sum for attorneys' fees, which shall be deemed to have accrued on the date such action was filed. In addition to all other remedies available at law or in equity, upon the failure of an Owner to observe and perform the covenants, obligations and conditions of this Easement other maintenance and repair obligation as required herein, within ten (10) days (unless such matter cannot be fully completed with such ten (10) day period, provided that the defaulting Party shall have commenced to cure within two (2) business days of receipt of such notice, and diligently pursues completion thereof) following written notice thereof, the non-defaulting Party shall have the right to perform such maintenance and/or repair of items, as applicable, on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable, out of pocket costs actually incurred in connection therewith. Such non-defaulting Party will have the additional right to pursue all remedies available at law or in equity, including pursuit of an order issued by a court of competent jurisdiction compelling and requiring the defaulting Party to observe and perform the covenants, obligations and conditions of this Easement. Such non-defaulting Party may employ attorneys to pursue its legal rights hereunder, and, if it prevails before any court or agency of competent jurisdiction, the defaulting Party will be obligated to pay all expenses incurred by such non-defaulting Party in enforcing this Easement, including reasonable attorneys' fees. Any such unpaid amounts not paid within ten (10) days of receipt of the written invoice from the non-defaulting Party and the costs of collection (if any), shall be charged as a continuing lien against the defaulting Party's Parcel and such unpaid amounts shall accrue interest at the lesser of 10%; or the maximum amount permitted by law.

#### **ARTICLE 5**

##### **MISCELLANEOUS PROVISIONS**

**5.1 CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every person, corporation, partnership, limited partnership, trust, association, or other legal entity, who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of Lot 4, Lot 4A or Lot 4B, whether or not such interest is reflected upon the Public Records of Rutherford County, Tennessee, shall be conclusively deemed to have consented and agreed to each and every term, provision, covenant, condition, restriction and reservation contained or by reference incorporated in this Easement, whether or not any reference to this Easement is contained in the document or instrument pursuant to which such person, corporation, partnership, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in Lot 4, Lot 4A or 4B or any portion thereof.

**5.2 GOVERNING LAW.** This Easement and the interpretation and enforcement of the same shall be governed by and construed in accordance with the laws of the State of Tennessee.

**5.3 ATTORNEYS' FEES.** In the event that legal proceedings are instituted to enforce any of the provisions set forth in this Easement, as amended or modified from time to time, or to enjoin any violation or attempted violation or default or attempted default of the same, the prevailing party in such proceeding

shall be entitled to recover, from the losing party such reasonable attorneys' fees and court costs as may be awarded by the Court rendering judgment in such proceedings.

**5.4 NO WAIVER.** Failure by the Declarant to enforce any term, provision, covenant, condition, restriction or reservation herein contained in any particular instance or on any particular occasion shall not be deemed a waiver of the right to do so upon any subsequent violation or attempted violation or default or attempted default of the same or any other term, provision, easement or reservation contained herein.

**5.5 CUMULATIVE RIGHTS AND REMEDIES.** In connection with the enforcement of this Easement, all rights and remedies of the Declarant and the Owners, to the extent provided herein, shall be cumulative, and no single right or remedy shall be exclusive of any other, and Declarant and the Owners, to the extent specifically provided in this Easement, shall have the right to pursue anyone or all of such rights or remedies or any other remedy or relief which may be provided by law, whether or not expressly stated in this Easement or otherwise.

**5.6 EFFECT OF INVALIDATION.** If in the course of an attempt to enforce this Easement, any particular provision of this Easement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**5.7 NOTICE.** Any notice required or permitted to be given pursuant to the provisions of this Easement shall be in writing and shall be deemed to have been properly and timely delivered by either party to the other if such notice shall have been delivered by overnight express mail (which shall include Federal Express or United Parcel Service or any other nationally recognized overnight Courier Service) or certified mail, return receipt requested and notices shall be effective upon receipt (as evidenced by return receipt if sent via mail). Rejection or refusal to accept will have the effect of receipt. Notice to an Owner shall be delivered to the address of the applicable Owner as reflected in the tax records of Rutherford County, Tennessee.

**5.8 DURATION.** The terms and provisions of this Easement will run and bind Lot 4, Lot 4A and 4B and will remain in effect perpetually to the extent permitted by law.

**5.9 INDEMNIFICATION.** Any party who performs work on another's property shall promptly restore any portion of the property damaged or disturbed as a result of such work, and shall indemnify the Owners of Lot 4, Lot 4A and Lot 4B on which such work is performed against any loss, damage, claim, suit, cost and expense (including reasonable attorneys' fees) arising out of the work performed.

**5.10 NO WARRANTIES.** Declarant makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of the terms and provisions of or the easements, covenants, conditions, restrictions and reservations set forth in this Easement, or as to the compliance of any of the same with public laws, ordinances and regulations applicable thereto.

**5.11 NO DEFAULT.** No default or violation of any of the terms of this Easement, shall constitute the basis for cancellation or termination of this Easement.

**IN WITNESS WHEREOF** the Declarant has caused this Easement to be made and executed as of the day and year first above written.

Signed, Sealed and Delivered in the presence of:

**VESTER WALDRON FAMILY LIMITED  
PARTNERSHIP**, a Tennessee limited  
partnership

By: \_\_\_\_\_

Gregory E. Waldron, President of BVW,  
Inc., General Partner of Vester Waldron  
Family Limited Partnership

STATE OF TENNESSEE       )  
                                          ss.  
COUNTY OF RUTHERFORD )

Before me, the undersigned authority, of the state and county aforesaid, personally appeared Gregory E. Waldron, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself to be President of BVW, Inc., General Partner of Vester Waldron Family Limited Partnership, the within name bargainor, and that he as such President of BVW, Inc., General Partner executed the foregoing instrument (Declaration of Access Easement) for the purposes therein contained, by signing the name of the partnership by himself as President of BVW, Inc., General Partner of Vester Waldron Family Limited Partnership.

WITNESS MY HAND and official seal at office in Murfreesboro, Tennessee, on this 23 day of September, 2021.

My Commission expires: 10/17/21

Notary Public



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JOINDER AND CONSENT OF MORTGAGEE TO THIS EASEMENTS

KNOW ALL MEN BY THESE PRESENTS:

That Wilson Bank & Trust (the "Mortgagee"), whose address is P.O. Box 768 Lebanon, TN, being the holder of that certain Mortgage and Security Agreement dated 10/30/2018, from Vester Waldron Family Limited Partnership, a Tennessee Limited partnership, recorded on 10/31/2018 in Record Book 1723, Page 209-2091 Register's Office of Rutherford County, Tennessee (the "Mortgage"), hereby joins in and consents to the filing of the Declaration of Easement, dated 9/23/2021 (the "Easement").

Mortgagee

Wilson Bank & Trust

By: Andy Jakes

STATE OF Tennessee

COUNTY OF Rutherford

ss.

Before me, the undersigned authority, of the state and county aforesaid, personally appeared Andy Jakes, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself to be S.V.P. of Wilson Bank & Trust, the within name bargainor, or mortgagee, and that Andy Jakes as such S.V.P. executed the foregoing instrument ( ) for the purposes therein contained, by signing the name of the mortgagee by Andy Jakes as S.V.P.

Given under my hand and official seal this the 23<sup>rd</sup> of September 2021.

My commission expires: January 30, 2024 Notary Public Leslie M. Pionke

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AFFIDAVIT

I hereby swear or affirm that the actual consideration for this transfer, or the value of the property transferred, whichever is greater, is **\$50.00**, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

George H. White  
Affiant

Sworn to and subscribed before me on this 23 day of September, 2021.

My Commission expires: 10/17/21



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LOT 4, LOT 4A AND 4B**

**Lot 4:**

Land being located in the Town of Smyrna, the 3rd Civil District of Rutherford County, Tennessee, and being Lot 4 of the Final Plat, Stonetrace, as recorded at Plat Book 45, Page 108, Register's Office of Rutherford County, Tennessee.

**Lot 4A:**

Land being located in the Town of Smyrna, the 3rd Civil District of Rutherford County, Tennessee, and being Lot 4A of the Final Plat, Stonetrace, as recorded at Plat Book 45, Page 108, Register's Office of Rutherford County, Tennessee.

**Lot 4B:**

Land being located in the Town of Smyrna, the 3rd Civil District of Rutherford County, Tennessee, and being Lot 4B of the Final Plat, Stonetrace, as recorded at Plat Book 45, Page 108, Register's Office of Rutherford County, Tennessee.

**EXHIBIT "B"**

**SITE PLAN**

# STONETRACE CENTER SITE PLAN, EXHIBIT B

## LEGEND



ACCESS  
DRIVES



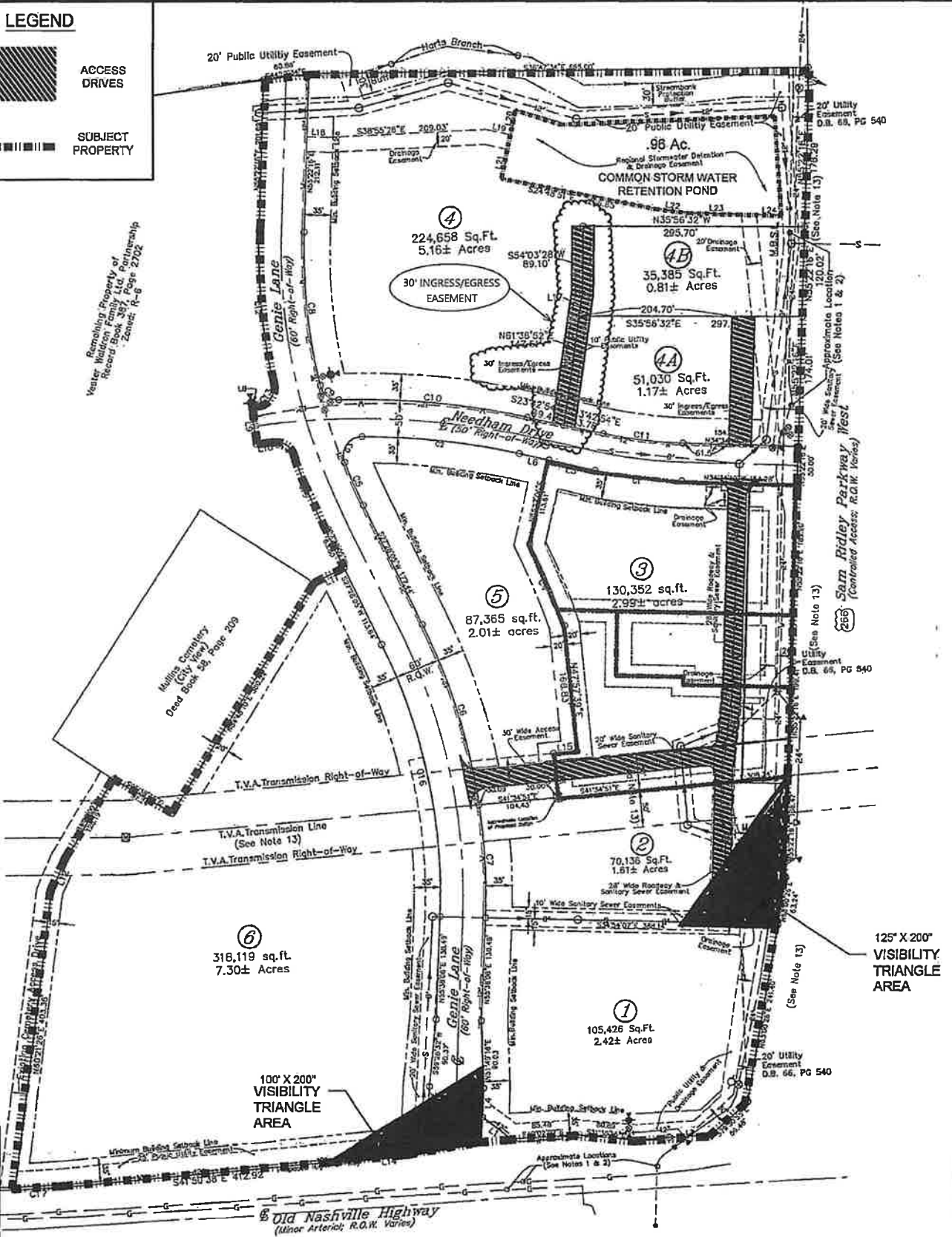
SUBJECT  
PROPERTY

Remarking Property of  
Vester Waldron Family Ltd. Partnership  
Record Book 387, Page 2702  
Zone: R-6

Remarking Property of  
Vester Waldron Family Ltd. Partnership  
Record Book 387, Page 2702  
Zone: R-6



SCALE = NTS



**EXHIBIT "C"**

**LEGAL DESCRIPTION**

**For**

**30' Ingress / Egress Easement**

**(The Access Drive)**

Vester Family Ltd. Partnership  
Tax Map 28, Part of Parcels 44.17, 44.18 & 44.19  
Part of Lots 4, 4A & 4B, Stonetrace Subdivision  
Plat Book 45, Page 108

A 30 Foot Wide Access Easement being part of Lots 4, 4A & 4B of Stonetrace Subdivision (Plat Book 45, Page 108) as follows:

Beginning at an iron pin on the east right-of-way of Needham Drive, 25 feet off the centerline, lying approximately 315.04 feet north of the north right-of-way of Sam Ridley Parkway West, said pin being the SW corner of Lot 4 and the NW corner of Lot 4A thence with the east right-of-way of Needham Drive

N-23°42'54"-W, 15.05 feet to a point, being the NW corner of this easement; thence running into Lot 4 to points as follows:

N-61°36'52"-E, 146.38 feet; thence

N-62°21'14"-E, 30.22 feet; thence

N-54°03'28"-E, 88.01 feet to a point, being the NE corner of this easement; thence

S-35°56'32"-E, 30.00 feet to a point on the east line of Lot 4B, being the SE corner of this easement; thence running into Lot 4B

S-54°03'28"-W, 90.19 feet to a point; thence continuing through Lot 4B and into Lot 4A

S-62°21'14"-W, 32.21 feet to a point; thence continuing through Lot 4A

S-61°36'52"-W, 148.64 feet to a point on the east right-of-way of Needham Drive, being the SW corner of this easement; thence with the east right-of-way of Needham Drive

N-23°42'54"-W, 15.05 feet to the pin at the beginning; containing 8,035 square feet, or 0.18 acre, more or less.

This easement is subject to a 20 Foot Wide Public Utility Easement as recorded in Plat Book 45, Page 108), and all other easements and/or restrictions either recorded or by prescription that a complete title search may reveal.

Prepared by:  
Huddleston-Steele Engineering, Inc.  
2115 Northwest Broad Street  
Murfreesboro, TN 37129