

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

IN RE: RELOCATION OF CEMETERY)
AT 0 CANE RIDGE ROAD,)
)
Meritage Homes of Tennessee, Inc.,) **Docket No. _____**
Petitioner.)

PETITION FOR EXCAVATION AND RELOCATION

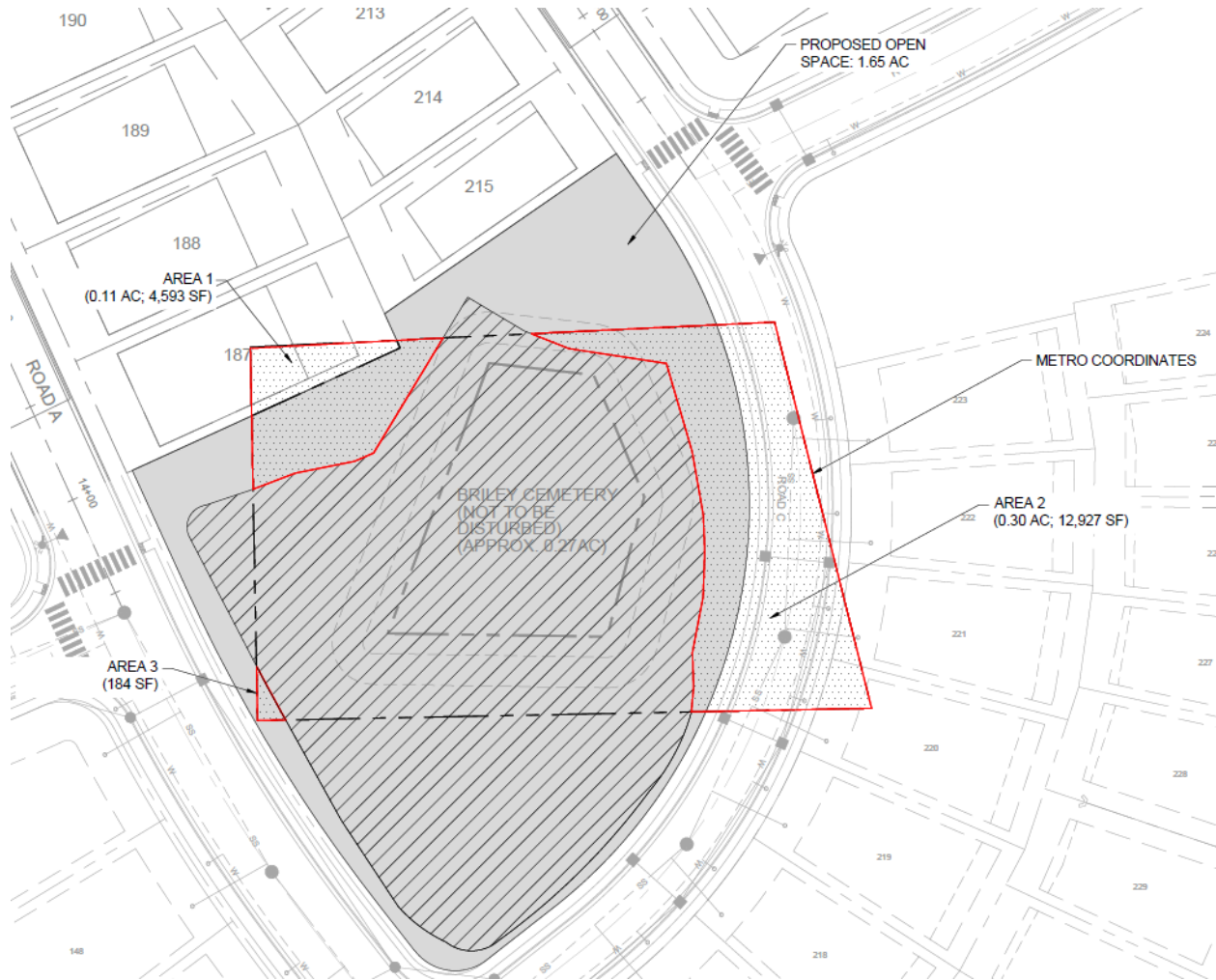
Meritage Homes of Tennessee, Inc. (“Petitioner”), by and through its undersigned counsel, respectfully petitions the Court for permission to conduct excavation of three small strips of land in Davidson County to determine if these areas contain human remains. If remains are located, Petitioner seeks this Court’s permission to terminate the use of these areas as a cemetery and relocate the remains on the property. In support of its Petition, Petitioner states as follows:

I. INTRODUCTION

Petitioner owns property in Cane Ridge, where it is currently developing a residential neighborhood. In 2021, Petitioner engaged James Greene, MA, RPA, a Senior Archaeologist with TRC Companies, Inc. (“TRC”) in Nashville, Tennessee, to perform a background review and boundary delineation of a known cemetery located at the property. Mr. Greene and TRC determined that the cemetery was approximately 0.27 acres in size. Based upon these findings, Petitioner prepared its development plans such that the cemetery will remain undisturbed. In addition, Petitioner has arranged for the cemetery to be surrounded by a 1.65 acre open space, which will remain free of development.

Despite having no plans to disturb the cemetery and despite arranging for the cemetery to be surrounded by a substantial open space, Meritage brings this action due to an on-foot survey of the property performed by the Metro Historical Commission. Specifically, the Metro Historical Commission conducted an on-foot survey in 2022 and used a cell phone to generate approximate

GPS coordinates for the cemetery boundary. In evaluating these approximate coordinates, there are three small spaces of land that Metro maintains is part of the cemetery, but that lie outside of Petitioner's proposed open space. These small strips of land are depicted as Areas 1, 2, and 3 below:¹



Petitioner does not believe that Metro's coordinates are correct, based upon the delineation report by TRC. Further, there are no headstones in Areas 1, 2, or 3, and Petitioner understands from Metro that its coordinates are approximate. However, out of an abundance of caution,

¹ The striped sections in this drawing show areas that will not be disturbed in any fashion. The solid grey sections show areas within the proposed open space where Meritage intends to conduct grading. The dotted sections depict areas 1, 2, and 3.

Petitioner seeks this Court’s permission to excavate Areas 1, 2, and 3 and, if there are any human remains found in those areas, relocate those remains in the open space on the Property.

II. PARTIES AND JURISDICTION

1. Petitioner is an Arizona corporation with its principal place of business at 8800 East Raintree Drive, Suite 300, Scottsdale, Arizona 85260-3966.

2. In January 2023, Petitioner purchased land at 0 Cane Ridge Road, Cane Ridge, Tennessee in Davidson County (the “Property”). Further information pertaining to the location of the Property, including legal descriptions of the real property, is contained in the Special Warranty Deed attached as **Exhibit A**.

3. Areas 1, 2, and 3 are located at the Property in Davidson County. Accordingly, jurisdiction and venue are proper in this Court pursuant to Tenn. Code Ann. § 46-4-103(a).

4. No party has identified any specific persons allegedly buried in Areas 1, 2, and 3, and there are no headstones in these areas. Accordingly, any dates of death and birth of persons allegedly buried in Areas 1, 2, and 3, if any, are unknown.

5. Notably, Areas 1, 2, and 3 are separate and distinct from a nearby cemetery on the Property often referred to as the Briley Cemetery, which contains headstones and other markers. Petitioner is not seeking to relocate the Briley Cemetery nor is Petitioner seeking to develop in or around this cemetery. To the contrary, Petitioner has planned its development in such a way that the Briley Cemetery will remain undisturbed and will be surrounded by substantial open space.

6. Pursuant to Tenn. Code Ann. § 46-4-103(b), necessary respondents in this proceeding are all “interested persons” (“Interested Persons”), which are defined in Tenn. Code Ann. § 46-4-102 as the following:

As used in this chapter, unless context otherwise requires, “interested persons” means any and all persons who have any right or easement or other

right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, **the nearest** relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground.

(emphasis added).

7. In this case, due to the lack of information pertaining to who, if any, may be buried in Areas 1, 2, and 3, the potential heirs of the persons allegedly buried in Areas 1, 2, and 3 cannot be ascertained. Accordingly, the Interested Persons are unknown.

8. Petitioner does not believe that Tenn. Code Ann. § 46-4-102 would require the heirs of the known persons buried in the nearby Briley Cemetery to be made parties to this action, given that Petitioner is not seeking permission to relocate any of those graves. Accordingly, while Petitioner has had discussions with the Briley family regarding this matter, Petitioner is not naming as respondents any of the heirs of the persons known to be buried in the Briley Cemetery at this time. However, Petitioner intends to file a motion seeking guidance from the Court on this issue and will follow the Court's instructions as to who, if anyone, should be a named party to this action pertaining to Areas 1, 2, and 3.

9. Petitioner additionally requests that the Court cause notice to be made to all unknown and/or nonresident Interested Persons by publication in a newspaper of general circulation in Davison County, Tennessee, for four consecutive weeks. Tenn. Code Ann. § 46-4-103(b) provides, in part, that: "Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law." *See also* Tenn. Code Ann. § 21-1-204 (detailing service by publication in Tennessee).

10. In addition, Petitioner is providing the requisite notice to the Tennessee Historical Commission pursuant to Tenn. Code Ann. § 46-4-103(c).

III. FACTS

11. If there are any graves located in Areas 1, 2, or 3, such graves hinder Petitioner's residential development plans for the Property. Specifically, Petitioner intends to develop the Property in such a way that any graves in Areas 1, 2, and 3 would interfere with roads and residential homes.

12. Accordingly, Areas 1, 2, and 3 are unsuitable as a resting place for the remains in accordance with the conditions set forth in Tenn. Code Ann. § 46-4-101, which support termination of the use of land as a cemetery when: "(1) The burial ground is abandoned; (2) The burial ground is in a neglected or abandoned condition; or (3) The existence of any conditions or activities about or near the burial ground that the court finds render the further use of the burial ground for the purposes mentioned in this section that are inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes."

13. Petitioner respectfully requests permission from this Court to conduct excavation of Areas 1, 2, and 3 and, if any remains are found, relocate such remains to the open space on the Property as permitted by Tenn. Code Ann. § 46-4-103(a).

14. In undertaking to relocate the decedents, Petitioner will conduct the reinterment of any remains with due care and decency in accordance with Tenn. Code Ann. § 46-4-104.

15. Petitioner will erect an appropriate memorial at the new location.

WHEREFORE, Petitioner respectfully requests that the Court:

1. Provide Petitioner guidance as to which persons, if any, should be named as respondents in this lawsuit;

2. In accordance with Tenn. Code Ann. §§ 21-1-204 and 46-4-103, enter an Order authorizing notice to all unknown Interested Persons by publication in a newspaper of general circulation in Davidson County, Tennessee, for four consecutive weeks;

3. In accordance with Tenn. Code Ann. §§ 46-4-101 and 46-4-104, enter an Order finding that Areas 1, 2, and 3 are unsuitable as a resting place for the remains of decedents because the conditions and activities about or near Areas 1, 2, and 3 (Petitioner's development of the Property) are inconsistent with due and proper reverence or respect for the memory of the dead;

4. In accordance with Tenn. Code Ann. § 46-4-104, enter an order approving the reinterment of the any remains located in Areas 1, 2, and 3 in the manner and location proposed in this Petition and terminating the use of Areas 1, 2, and 3 as a cemetery; and

5. For such further and general relief as may be appropriate.

Respectfully submitted,

/s/ Lisa K. Helton

Lisa K. Helton, #023684

SHERRARD, ROE, VOIGT & HARBISON, PLC

150 Third Avenue South, Suite 1100

Nashville, TN 37201

Tel: (615) 742-4525 | Fax: (615) 742-4539

lhelton@srvhlaw.com

Meritage Homes of Tennessee, Inc.

Karen Johnson Davidson County
Batch# 966024 DEEDWARRSP
01/31/2023 11:56:34 AM 6 pgs
Fees: \$33.00 Taxes: \$19,795.00



20230131-0007154

SPECIAL WARRANTY DEED

This Instrument Prepared By: Drapac Capital Partners 1031 Marietta Street, Suite A Atlanta, Georgia 30318	SEND TAX BILLS TO:	MAP/PARCEL NUMBER
	Meritage Homes of Tennessee, Inc. 8800 E. Raintree Drive, Suite 300 Scottsdale, Arizona 85260	182-00-0-230.00 182-00-0-207.00 182-00-0-209.00 182-00-0-027.00

THIS INDENTURE, made and entered into this 30th day of January 2023, by and between

CANE RIDGE TN, LLC, a Delaware limited liability company, fka DRAPAC GROUP 46, LLC
(the "Grantor")

And

E-FILED
2/23/2024 11:11 AM
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

- MERITAGE HOMES OF TENNESSEE, INC, an Arizona corporation (the "Grantee")

FOR AND IN CONSIDERATION of the sum of Ten dollars and no/100 (\$10.00), cash in hand and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said Grantor has bargained and sold and does hereby bargain, sell, convey and confirm unto Grantee the following described real estate, situated and being in the County of Davidson, State of Tennessee:

See Exhibit "A" attached hereto and by this reference incorporated herein

TO HAVE AND TO HOLD said real estate, with the appurtenance, estate, title and interest thereto belonging, to the Grantee and its successors, heirs and assigns forever, and Grantor covenants that it is lawfully seized and possessed of said real estate in fee simple, has a good right to convey it, and that the same is unencumbered, except for those encumbrances set forth hereinafter.

Grantor further covenants and binds itself, its successors, heirs and representatives, to warrant and forever defend the title to said real estate to said Grantees, their successors, heirs and assigns, against the lawful claims of all persons, claiming by, through or under the Grantor, but not otherwise.

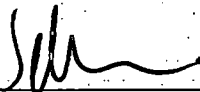
Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

[Signatures appear on the following page]

**EXHIBIT
A**

Witness my hand this 23rd day of January, 2023, the corporate party having caused its name to be signed hereto by its duly authorized officer on said day and date.

CANE RIDGE TN, LLC,
a Delaware limited liability company

By: 
Print Name: Sebastian Drapac
Title: Manager

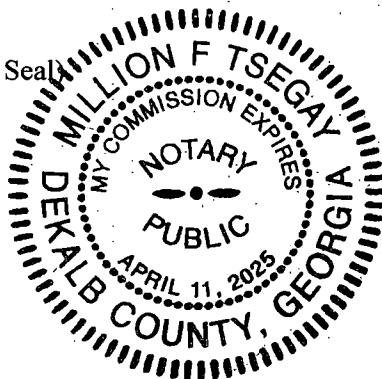
STATE OF GEORGIA
COUNTY OF FULTON

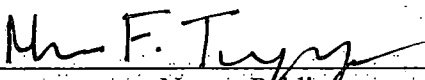
I, Million F. Tsegay, a Notary Public of the County and State aforesaid, certify that Sebastian Drapac personally appeared before me this day and acknowledged that he is the authorized Manager of CANE RIDGE TN, LLC, the foregoing instrument was signed on behalf of CANE RIDGE TN, LLC, a Delaware limited liability company.

Witness my hand and official seal, this the 23rd day of January, 2023.

My Commission Expires: April 11, 2025

(Affix Notary Seal)




Notary Public

Million F. Tsegay
Print Name

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

THE ACTUAL CONSIDERATION OR VALUE, WHICHEVER IS GREATER, FOR THIS
TRANSFER IS \$5,350,000.00.

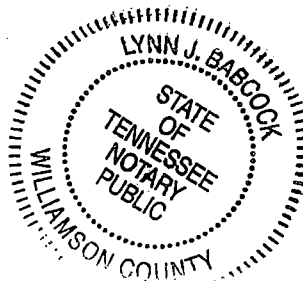
Alysi M. Cantrell
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, THIS THE 30th DAY OF JANUARY, 2023.

Lynn J. Babcock
Notary Public

MY COMMISSION EXPIRES: 12-21-2024

(AFFIX SEAL)



This is unimproved property known as 0 Cane Ridge Road, Cane Ridge, TN.

EXHIBIT A**LEGAL DESCRIPTION**

PARCEL A

LAND IN DAVIDSON COUNTY, TENNESSEE, BEING DESCRIBED AS FOLLOWS:

TRACT NO'S. III, IV, & PARCEL 3 OF TRACT V

A CERTAIN TRACT OR PARCEL OF LAND IN DAVIDSON COUNTY, TENNESSEE,
DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT AN IRON PIN HAVING COORDINATES OF NORTH 612,579.86 AND EAST 1,778,693.55 SITUATED IN THE WESTERLY MARGIN OF CANE RIDGE ROAD, SAID POINT BEING THE NORTHWEST CORNER OF THE SMITH PROPERTY (INST. 20110524-0039774, TM 182 00 0 026.00, R.O.D.C.T.) THE TRUE POINT OF BEGINNING, THENCE, LEAVING SAID ROAD AND ALONG THE SMITH, LENTZ (INST. 0000069-00008511, TM 182 00 0 181.00, R.O.D.C.T.), McGEE (INST. 20050324-0032268, TM 182 00 0 177.00, R.O.D.C.T.) , AND WALKER (INST. 20200724-0081423, TM 182 00 0 176.00, R.O.D.C.T.) PROPERTIES THE FOLLOWING CALLS; S 11° 25' 18" W, 573.54 FEET TO AN IRON PIN, S 07° 28' 07" W, 401.98 FEET TO AN IRON PIN, S 07° 29' 59" W, 279.85 FEET TO AN IRON PIN, S 07° 25' 50" W, 248.12 FEET TO AN IRON PIN, S 07° 28' 25" W, 255.06 FEET TO AN IRON PIN, S 80° 41' 30" E, 501.26 FEET TO AN IRON PIN, AT A CORNER TO CLARK (INST. 0000197-00011368, TM 182 00 0 136.00, BOOK 11368, PG 197, R.O.D.C.T.), THENCE, WITH THE CLARK PROPERTY S 08° 33' 52" W, 307.50 FEET TO AN IRON PIN, TAYLOR'S (INST. 20170927-0099102, TM 182 00 0 017.00, R.O.D.C.T.) CORNER, THENCE WITH THE TAYLOR PROPERTY THE FOLLOWING TWO CALLS; N 79° 53' 40" W, 473.89' TO AN IRON PIN, S 07° 54' 17" W, 306.26 FEET TO AN IRON PIN ON TURNER'S (INST. 20180730-0074311, TM 182 00 0 172.00, R.O.D.C.T.) LINE, THENCE, WITH TURNER'S LINE N 80° 24' 30" W, 950.39 FEET TO AN IRON PIN, A CORNER TO LOT 288 OF OLD HICKORY HILLS SUBDIVISION PHASE 3 - SECTION 2 (INST. 20150209-0011683, R.O.D.C.T.), THENCE, WITH THE REAR LINE OF OLD HICKORY HILLS SUBDIVISION PHASES 2 AND 3 THE FOLLOWING SEVEN CALLS; N 79° 45' 51" W, 403.64 FEET TO AN IRON PIN, N 08° 29' 26" E, 231.25 FEET TO AN IRON PIN, N 08° 26' 03" E 390.17 FEET TO AN IRON PIN, N 80° 56' 50" W, 465.74 FEET TO AN IRON PIN, N 04° 52' 46" E, 112.77 FEET TO AN IRON PIN, N 05° 30' 05" E, 341.47 FEET TO AN IRON PIN, N 83° 07' 14" W, 496.22 FEET TO AN IRON PIN A CORNER TO EVERGREEN HILLS, G.P., THENCE, WITH EVERGREEN HILLS, G.P. PROPERTY (INST. 200605230060559, TM 182 00 0 214.00, R.O.D.C.T.), AND EGH LAND DEVELOPMENT, LLC PROPERTY (INST. 201802080013000, TM 182 00 0 228.00, R.O.D.C.T.) N 07° 30' 25" E, 1065.84 FEET TO AN IRON PIN, THENCE, WITHIN THE CENTERLINE OF THE TVA TRANSMISSION LINE EASEMENT (BOOK 4424, PAGE 973, R.O.D.C.T., R.O.D.C.T.), DRAPAC GOUP 46, LLC PROPERTY (MAP 182, PARCEL 27, INST. 20150209-0011683, R.O.D.C.T.) N 49° 14' 50" E, 428.25 FEET TO AN IRON PIN AT SOUTHWEST CORNER OF LANGFORD (INST 20090609-0053568, TM 182 00 0 137.00, R.O.D.C.T.), THENCE, LEAVING THE TVA TRANSMISSION LINE EASEMENT, S 55° 29' 52" E, 718.41 FEET TO A 1/2" PIPE, S 73° 42' 33" E, 1313.15 FEET TO A 1/2" PIPE, N 11° 25' 10" E, 437.74 FEET TO AN IRON

PIN, N 82° 55' 19" E, 49.21 FEET TO AN IRON PIN ON THE WESTERLY RIGHT OF WAY OF CANE RIDGE ROAD, THENCE, WITH THE WESTERLY RIGHT OF WAY OF CANE RIDGE ROAD THE FOLLOWING CALLS; BY A CURVE TO THE LEFT HAVING A RADIUS OF 163.85 FEET, AN ARC LENGTH OF 57.37 FEET, A CHORD BEARING OF S 17° 27' 59" E, AND A CHORD LENGTH OF 57.08 FEET TO AN IRON PIN, S 32° 05' 43" E, 24.58 FEET TO THE POINT OF BEGINNING, CONTAINING 99.08 ACRES MORE OR LESS.

PARCEL B

BEGINNING ON AN IRON PIN ON THE WESTERLY RIGHT OF WAY LINE OF CANE RIDGE ROAD HAVING COORDINATES OF NORTH 610,820.97 AND EAST 1,779,181.41, THE TRUE POINT OF BEGINNING FOR PARCEL B, THENCE, WITH THE WESTERLY RIGHT OF WAY OF CANE RIDGE ROAD S 08° 21' 22" W, 160.00 FEET TO AN IRON PIN, A CORNER TO CLARK, THENCE WITH CLARK'S LINE N 03° 01' 19" E, 161.15 FEET TO AN IRON PIN, CLARK'S NORTHEAST CORNER, THENCE, S 79° 55' 53" E, 15.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1,198.53 SQUARE FEET MORE OR LESS.

Less and Except:

Being land situated in the 31st Council District of Davidson County, Tennessee, said land being a portion of the land conveyed to Drapac Group 46, LLC, of record in Instrument Number 20150209-OO11683, in the Register's Office for Davidson County, Tennessee (R.O.D.C.,TN); Commencing at the northeasterly corner of the Clark Property, of record in Deed Book 11368, Page 197, R.O.D.C.,TN, thence N 80°55'34" W, a distance of 421.38 feet; Thence, S 09°16'16" W, a distance of 100.00 feet;

Thence, S 80°14'24" E, a distance of 112.44 feet to the Point of Beginning, said point being along the common line between Clark and Drapac;

Thence along said line, S 80°14'24" E, a distance of 25.0 feet to a point; Thence S 08°30'28" W, a distance of 307.56 feet to an iron rod;

Thence leaving said line N 79°53'13" W, a distance of 25.0 feet to a point

Thence N 08°30'28" E, a distance of 307.41 feet to the point of beginning containing 7,689 square feet or 0.176 acres of land more or less.

Being part of the same property conveyed to Drapac Group 46, LLC, a Delaware limited liability company by Warranty Deed dated 02/09/2015 from PNB Holding Co. 2, Inc., a Tennessee corporation of record in Instrument 201502090011683, Register's Office for Davidson County, Tennessee. Drapac Group 46, LLC, a Delaware limited liability company is now known as Cane Ridge TN, LLC, a Delaware limited liability company.

And being the same property conveyed to Cane Ridge TN, LLC, a Delaware limited liability company by Warranty Deed dated 02/10/2019 from Christopher B. Clark, a married man of record in Instrument 201902260017491, Register's Office for Davidson County, Tennessee.

EXHIBIT B
PERMITTED EXCEPTIONS

1. Taxes for the year 2023, a lien not yet due and payable.
2. Grant of Transmission Line Easement of record in Book 4424, Page 973, Register's Office for Davidson County, Tennessee.
3. Stormwater Detention Agreement of record in Instrument 200609270119247, Register's Office for Davidson County, Tennessee.
4. Grant of Perpetual Easement & Option Agreement of record in Instrument 201807300074330, Register's Office for Davidson County, Tennessee.
5. Non-Exclusive Sanitary Sewer Utility Easement of record in Instrument 201902260017493, Register's Office for Davidson County, Tennessee.
6. Temporary Construction Easement of record in Instrument 201902260017494, Register's Office for Davidson County, Tennessee.
7. Applications for Greenbelt of record in Instrument Nos. 201603030020673, 201603030020676 and 201603030020677, Register's Office for Davidson County, Tennessee. Subject property is currently assessed under Greenbelt or Agricultural Use and will be subject to a roll back tax assessment pursuant to the Agricultural, Forest and Open Space Land Act of 1976 TCA Sec. 67-5-1001 et. seq. upon breakup of the existing parcel into parcels of less than 15 acres or conversion of use.
8. Easements for the flow of Turkey Creek and any pond, stream or creek as much as there on lies.
9. Title to any portion of said land lying in the bed or banks of any waterway, stream or creek lying within the bounds of subject property, the rights of upper and lower riparian owners to the free and unobstructed flow of said waters, without diminution or pollution; and the consequences of any past or future change in the location of said waters.
10. All matters shown on the plat of survey by Joey C. Wilson, II, RLS No. 2089, Wilson & Associates, P.C., 108 Beasley Drive, Franklin, TN 37064, dated 03/02/2022, Project No. 21-1643.