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04-1340

DEED OF EASEMENT

Exempt from recordation taxes under §58.1-801 pursuant to Sections 58.1-811(A)(3)

THIS DEED OF EASEMENT, made and dated this 4<sup>th</sup> day of March, 2004, by and between GREYSTONE PROPERTIES, LLC, a Virginia limited liability company, party of the first part, hereinafter called the Grantor, and the COUNTY OF CLARKE, VIRGINIA, ("County"), and the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY, ("Authority"), parties of the second part, hereinafter called the Grantees.

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of those two (2) certain tracts of land containing 1.47 acres and 2.14 acres, respectively, located in Greenway Magisterial District, Clarke County, Virginia, said property being more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Property"); and

WHEREAS, the Property has forrestal, natural, scenic and historic resources; and

WHEREAS, the aforesaid Property contains unique old growth oak trees, rock formations and other aesthetic features and is located on a scenic byway, contains a stone fence located on the same, includes wildlife habitat and is across from property already in a Conservation Easement;

WHEREAS, in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Code of Virginia, in order to protect old growth oaks, that are well over an estimated age of 200 years, as well as unique rock formations and other environmental features, the Grantors are willing to grant a perpetual open space conservation easement over the Property, on the terms and conditions hereinafter set forth; and

WHEREAS, the Grantees are willing to accept such easement; and

RETURNED TO GREYSTONE 4/19/04  
BENJAMIN M. BUTLER, ESQ.  
KUYKENDALL, JOHNSTON, McKEE & BUTLER, P.L.C.  
Post Office Drawer 2097  
Winchester, Virginia 22604

**WHEREAS**, the County and the Authority are authorized by the Open Space Land Act to accept, hold , and administer open space easements, and possess the Authority to accept and are willing to accept this easement under the terms and conditions hereinafter set forth; and

**WHEREAS**, Grand Oaks Drive (a 50-foot-wide right-of-way to be dedicated to the Virginia Department of Transportation) is not within the open space easement but abuts the same.

**WHEREAS**, the Grantor intends to form the Boyce Crossing Homeowners Association ("Homeowners Association") to which it will convey the aforesaid tracts of land containing 1.47 acres and 2.14 acres after the Deed of Easement granted hereby has been recorded and the Homeowners Association will thereafter undertake all of the duties and responsibilities agreed upon by the Grantor herein.

**NOW THEREFORE**, for good and valuable consideration, receipt of which all properties acknowledge, and in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantors hereby grant and convey to the Grantees a perpetual open space conservation easement ("Easement") over the Property. The easement area to be known as the "Boyce Crossing Trees Preserve" is hereby subject, in perpetuity, to the following terms, conditions, and restrictions:

1. This Easement is perpetual. It is an easement in gross and runs with the land.
2. This Easement shall be enforceable by any one or more of the Grantees.
3. The Property is currently zoned for residential use and developable at four (4) or more dwellings per acre and Grantor hereby waives and terminates any right or claim to develop the property as aforesaid.
4. The Property shall not be divided or subdivided in any manner except for property line adjustments with other property in conservation easements.

5. No permanent or temporary building or structure shall be erected or constructed on the Property.

6. No grading or earth removal is permitted on the property if it will materially diminish or impair the conservation values protected by this easement, but Grantor shall be allowed to grade and remove earth as is necessary to install and maintain (a) Grand Oaks Drive, and (b) all utilities and other facilities as allowed in the right-of-way of Grand Oaks Drive.

The Grantor agrees that no maintenance, except as otherwise provided, shall occur outside the 50-foot right-of-way (Grand Oaks Drive).

7. Display of billboards, signs, or other advertisements on the Property is prohibited, except to: (a) state solely the name of the Subdivision, Boyce Crossing, i.e., a subdivision identification or entrance sign; (b) advertise the sale or lease of Property in Boyce Crossing until January 1, 2008; (c) give directions to visitors; (d) provide warnings pertaining to trespassing, hunting, dangerous conditions, and other similar such warnings; and (e) identify the Conservation Easement area as **BOYCE CROSSING TREE PRESERVE**. No sign shall exceed eight (8) square feet or the Town of Boyce Zoning Ordinance requirements, whichever is more restrictive.

8. Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. The dumping, storage, or placement on the property of stumps, brush, grass, or other land-clearing debris from off-site is prohibited. Mining on the property is prohibited.

9. Stewardship of the Boyce Crossing Tree Preserve shall be controlled by two documents: 'Tree Protection Specifications' (Exhibit B attached hereto) and 'Tree Preserve Maintenance Agreement' (Exhibit C attached hereto). The first document shall identify in detail the specifications to protect the trees in the Property from any and all construction activities associated with (a) the 50-foot right-of-way (Grand Oaks Drive) adjacent to the Property and utilities therein, (b) the footpath described in paragraph #11,

and (c) the stone wall adjacent to East Main Street (Virginia Route 723). The second document shall identify in detail the specifications for maintenance of the Tree Preserve.

The Grantor shall prepare the two documents, and any amendments thereto, for the review and approval of the Authority. No construction activity associated with (a) the 50-foot right-of-way (Grand Oaks Drive) adjacent to the Property and utilities therein, (b) the footpath described in paragraph #11, or (c) the stone wall adjacent to East Main Street (Virginia Route 723) shall occur until the Authority has approved the 'Tree Protection Specifications' document. No plant maintenance or soil disturbance shall occur in the Property until the Authority has approved the 'Tree Preserve Maintenance Agreement' document.

10. Usage within the Conservation Easement Area, is limited to reasonable pedestrian use of the footpath, described in paragraph 11, and to passive recreational activities but shall not include any provision for any structures (on the ground or in the trees), picnic tables or other facilities. The Grantor shall make every reasonable effort to preclude additional footpaths or other activities that may cause earth compaction or disturbance.

11. Within the Conservation Easement there will be a 4-foot wide wood chip mulched footpath as shown on Exhibit A, leading from Grand Oaks Drive to Route 723. There will be a streetlight at the intersection of the footpath and Grand Oaks Drive. The Grantor shall maintain 4 feet on either side of the centerline of the footpath which is located within the Conservation Easement for reasonable pedestrian access. No motorized vehicle shall be allowed on the footpath during or after construction. The Grantor reserves the right to use such equipment (except motorized vehicles) as shall be necessary to build or maintain the pedestrian access and egress path across the easement property.

12. Grantor agrees that all utilities shall be placed underground and shall be placed in the 50-foot right-of-way (Grand Oaks Drive) to be dedicated to the Virginia Department of Transportation.

13. Grantor agrees to place a restriction within the Deed of Dedication of Boyce Crossing that in the 30-foot rear setback lines of all lots adjoining the Conservation Easement, no cutting or clearing of trees, 6 inches or greater in diameter, shall occur unless the tree(s) poses an imminent danger to person or property or poses a blockage of a drainage way as determined by Grantor.

14. The Parties agree that the Grantor may convey the 1.54 acres and the 2.13 acres described on Exhibit A hereto to the Boyce Crossing Homeowners Association, a Virginia non-stock corporation to be formed in the future and upon such conveyance to the Homeowners Association, all of the duties and responsibilities undertaken by the Grantor herein shall become the obligation of the Homeowners Association and the Grantor, from the date of the conveyance, shall relinquish all rights in the aforesaid tracts of land containing 1.47 acres, and 2.14 acres and shall be released from the obligations imposed upon it by this Deed of Easement.

15. General Terms:

(a) Although this Easement in gross will benefit the public in ways recited above, nothing herein shall be construed to convey a right to the public of access or use of the Property. The Grantor, its successors and assigns, retain the exclusive right to such access and use, subject to the terms of this Easement.

(b) The Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, the Virginia Conservation Easement Act, the Comprehensive Plan of Clarke County, and the conservation purposes of this Easement.

(c) Notwithstanding any other provision of this Deed of Easement, The Boyce Town Zoning Ordinance shall also apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

(d) If any provision of this Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

(e) The terms of this Easement shall inure to the benefit of, and be binding upon, the parties hereto, their agents, successors, and assigns.

(f) The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions, and restrictions herein contained, and therefore, in the event that the Grantor, its successors or assigns, violates or breaches any of such terms, conditions, and restrictions herein contained, any one or more of the Grantees, their successors or assigns, shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation, to require the restoration of the Property to its propr condition, and to obtain such other and further specific performance or relief as is necessary to enforce the terms of this Easement. The Grantees or any one of them, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to obtain compliance with the terms, conditions, and purposes of this Easement. In the event of a breach of the terms of this Easement, if the Grantees, or any of them, are required to take legal action to enforce the terms of this Easement, the owner of the property shall be responsible for all costs incurred by the Grantees therein, including reasonable attorney's fees.

(g) The Grantees, by their execution of this Deed of Easement, do hereby accept the conveyance of this Easement as set forth herein.

(h) The Grantees and their representatives may enter the property from time to time, upon 30 days written notice to the Grantor, for the sole purpose of inspections and enforcement of the terms of the easement granted herein.

(i) The Grantor, its successors and assigns shall notify each of the Grantees in writing within 60 days following any transfer or sale of the property.

WITNESS the following signatures and seals:

GREYSTONE PROPERTIES, LLC

By *James R. Wilkins III* (SEAL)  
James R. Wilkins, III, Member/Manager (Grantor)

COUNTY OF CLARKE, VIRGINIA

By *[Signature]* (SEAL)  
Chairman, Board of Supervisors (Grantee)

CLARKE COUNTY EASEMENT AUTHORITY

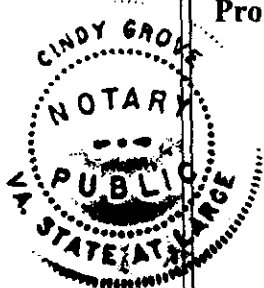
By *[Signature]* (SEAL)  
Chairman, Board of Directors (Grantee)

STATE OF VIRGINIA  
CITY/COUNTY OF Clarke, TO-WIT

The foregoing document was acknowledged before me this 4th day of March, 2004, by James R. Wilkins, III, Member/Manager, Greystone Properties, LLC, Grantor.

My Commission expires November 30, 2006.

*Cindy Grove*  
NOTARY PUBLIC

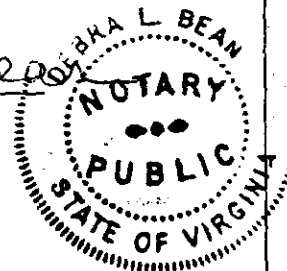


STATE OF VIRGINIA, At-Large  
CITY/COUNTY OF Clarke, TO-WIT

The foregoing document was acknowledged before me this 4th day of March, 2004, by John Staelin, who is the Chairman, Board of Supervisors, County of Clarke, Virginia, Grantee.

My Commission expires 3-31-05.

Debra L. Bean  
NOTARY PUBLIC

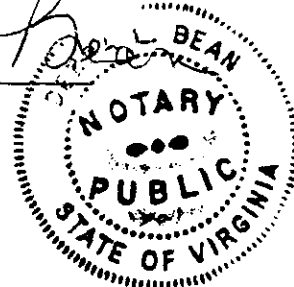


STATE OF VIRGINIA, At-Large  
CITY/COUNTY OF Clarke, TO-WIT

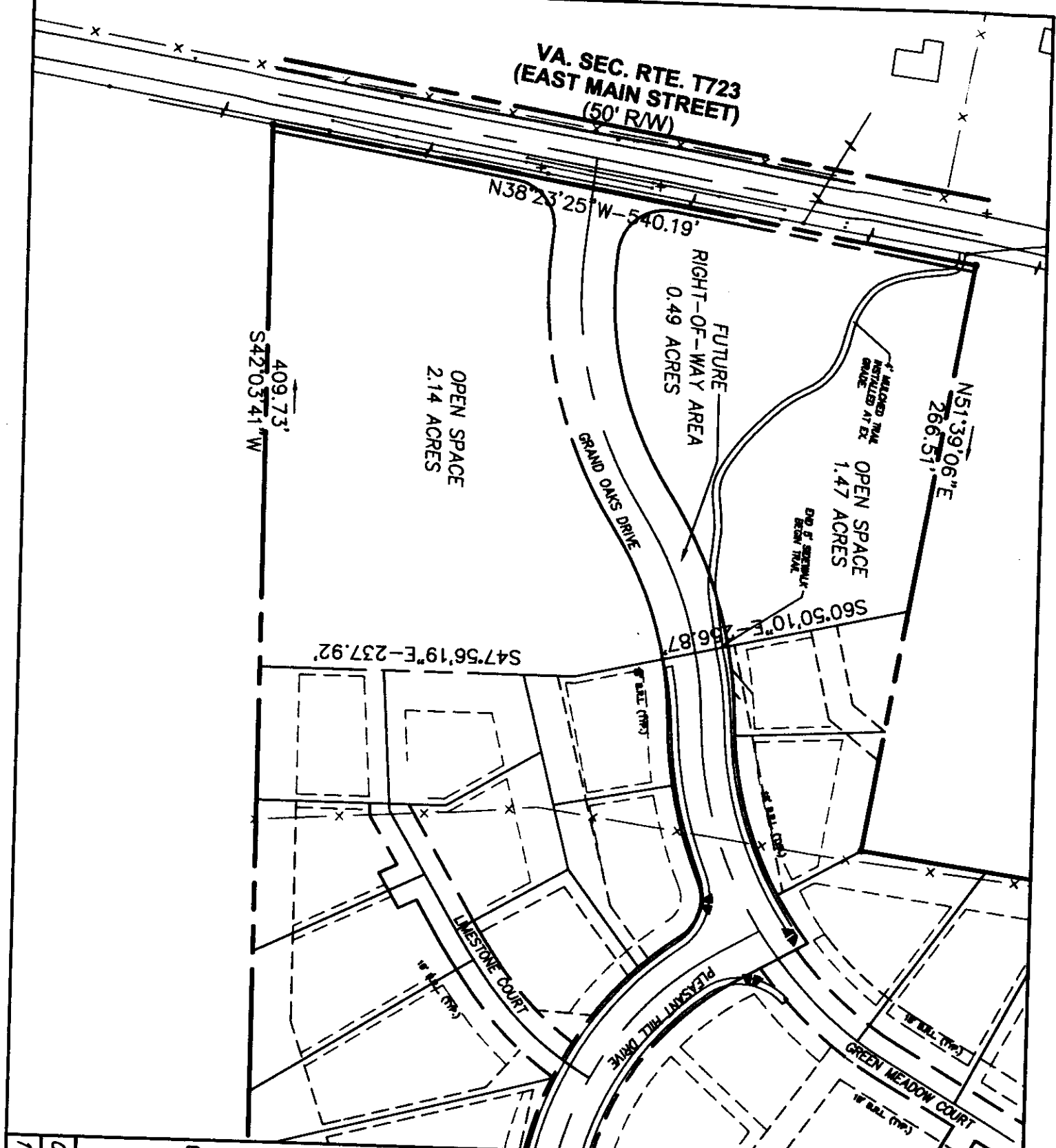
The foregoing document was acknowledged before me this 4th day of March, 2004, by Winkie Mackay Smith, who is the Chairman, Board of Directors, Clarke County Easement Authority, Grantee.

My Commission expires 3-31-05.

Debra L. Bean  
NOTARY PUBLIC







03/16/04 1 in. = 100 ft.	<p align="center"><b>Boyce Crossing          Conservation Easement</b></p> <p align="center"><b>3.61 Acres</b></p> <p>GREENWAY MAGISTERIAL DISTRICT    TOWN OF BOYCE, VIRGINIA</p>		<p><b>gilbert w. clifford &amp; associates, inc.</b></p> <p>Engineers    Land Planners    Water Quality</p> <p>117 E. Piccadilly St.-Suite 200    Winchester, Virginia 22601</p> <p>VOICE: (540) 687-2139    FAX: (540) 685-0483    EMAIL: gwcra@earthlink.net</p>
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EXHIBIT B

TREE PROTECTION SPECIFICATIONS

I. Site Clearing, Demolition

The following work must be accomplished before any demolition or site-clearing activity occurs within 100 feet of the tree(s) to be saved.

- A. The site contractor is required to meet with the Project Arborist at the site prior to beginning work to review all work procedures, access and haul routes, and tree protection measures.
- B. The limits of all tree protection zones shall be staked in the field.
- C. Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed under supervision of a qualified arborist, certified by the Mid-Atlantic chapter of the International Society of Arboriculture. A qualified arborist shall supervise removal of the tree(s) in a manner that causes no damage to the tree(s) and understory to remain.
- D. Tree(s) to be removed shall be felled so as to fall away from tree protection zones and to avoid pulling and breaking of roots of tree(s) to remain. If roots are entwined, they may require first severing the major woody root mass before extracting the tree(s). This may be accomplished by cutting through the roots by hand, with a vibrating knife, rock saw, narrow trencher with sharp blades, and other approved root-pruning equipment. [Note: if possible, show areas where root cutting is required on the demolition plan.]
- E. Tree(s) to be removed from within the tree protection zone shall be removed under the supervision of a qualified arborist certified by the Mid-Atlantic chapter of the International Society of Arboriculture.
- F. All downed brush and tree(s) shall be removed from the tree protection zone either by hand or with equipment sitting outside the tree protection zone. Extraction shall occur by lifting the material out, not by skidding it across the ground.
- G. Brush shall be chipped and placed in the tree protection zone to a maximum depth of 6 inches leaving the trunk clear of mulch.

- H. Tree(s) affected by construction activity shall be pruned in accordance with the provided Pruning Specifications.
- I. A 4-foot high, fence shall be erected to enclose the tree protection zone. Fencing shall remain in place for the duration of the road construction. Additionally, all roots shall be pruned 1 foot outside the tree protection zone by cutting all roots cleanly to a depth of 24 inches. Roots shall be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, narrow trencher with sharp blades or other approved root-pruning equipment.
- J. Any damage to tree(s) due to demolition activities, shall be reported to the Authority within 24-hourss so that remedial action can be taken. Timeliness is critical to tree health.

## II. Pruning Specifications

- A. Specifications for individual tree(s), indicated by tree identification number, and describing which branches should be pruned and how, may be needed. Also consider requirements for crown reduction and crown raising where structures will be close to tree(s).
- B. All trees affected by construction activity shall be pruned to:
  - 1. Provide 14 feet of vertical clearance over streets and 8 feet of vertical clearance over sidewalks.
- C. Where temporary clearance is needed for access, branches shall be tied back to hold them out of the clearance zone.
- D. Pruning shall not be performed during periods of flight of adult boring insects because fresh wounds attract pests. Pruning shall be performed only when the danger of infestation is past.
- E. A qualified arborist certified by the Mid-Atlantic chapter of the International Society of Arboriculture shall supervise all pruning.
- F. All pruning shall be in accordance with the International Society of Arboriculture Tree-Pruning Guidelines and/or the ANSI A300 Pruning Standard (American National Standard for Tree Care Operations) and adhere to the most recent edition of ANSI Z133.1.
- G. Interior branches shall not be stripped out.
- H. Pruning cuts larger than 4 inches in diameter, except for dead wood, shall be avoided.

- I. Pruning cuts that expose heartwood shall be avoided whenever possible.
- J. While in the tree, the arborist shall perform an aerial inspection to identify defects that require treatment. Any additional work needed shall be reported to the County Planner.

III. Construction Specifications

- A. Fences have been erected to protect tree(s) to be preserved. Fences define a specific protection zone for each tree or group of trees. Fences are to remain until all road work has been completed.
- B. Construction trailers and traffic and storage areas must remain outside fenced areas at all times.
- C. All underground utilities and drain or irrigation lines shall be routed outside the tree protection zone. If lines must traverse the protection area, they shall be tunneled or bored under the tree(s).
- D. No materials, equipment, spoil or waste or washout water may be deposited, stored, or parked within the tree protection zone (fenced area).
- E. Additional tree(s) pruning required for clearance during construction must be supervised by a qualified arborist.
- F. Any herbicides placed under paving materials must be safe for use around tree(s) and labeled for that use. Any pesticides used on site must be tree-safe and not easily transported by water.
- G. If injury should occur to any retained tree(s) during construction, it shall be reported to the County Planner within 24-hours so that remedial action can be taken.
- H. Erosion control devices such as silt fencing, debris basins, and water diversion structures shall be installed to prevent siltation and/or erosion within the tree protection zone.
- I. Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.
- J. Spoil from trenches, basements, or other excavations shall not be placed within the tree protection zone, either temporarily or permanently.

- K. No burn piles or debris pits shall be placed within the tree protection zone. No ashes, debris, or garbage may be dumped or buried within the tree protection zone.
- L. Fire-safe areas shall be maintained around fenced areas. No heat sources, flames, ignition sources or smoking shall be allowed near mulch or tree(s).
- M. No construction vehicles shall be operated in such a manner as to damage branches of saved tree(s) above the construction area.

EXHIBIT C

**Tree Preserve Maintenance Agreement**

1. It shall be the responsibility of the Boyce Crossing Homeowners Association (the HOA) to manage the woodland and large tree(s) that are the subject of the conservation easement. All expenses related to the Boyce Crossing Conservation Easement shall be the responsibility of the Boyce Crossing Homeowners Association.
  - 1.1 This shall include the pathway as shown in Exhibit A.
2. The homeowners association shall form a standing committee to be known as The Boyce Crossing Conservation Easement Committee, or another name as determined by this committee once it has met.
  - 2.1 The purpose of The Boyce Crossing Conservation Easement Committee shall be to oversee management of the portion of the conservation easement that is on the HOA's property.
    - 2.1.1 The goal of The Boyce Crossing Conservation Easement Committee shall be to encourage preservation of the old growth trees, the rock outcroppings, and the stone wall, and to ensure that future generations have a healthy parcel of forested land in the community.
    - 2.1.2 The goal of The Boyce Crossing Conservation Easement Committee shall be to protect and promote health and longevity of the tree(s) in the Property, to provide for the removal of invasive exotic plant species as identified by the Virginia Department of Conservation and Recreation, and to protect the health, safety, and welfare of any people or property within the 50-foot right-of-way (Grand Oaks Drive) adjacent to the Property, the eight foot wide maintenance corridor established for the footpath described in paragraph #11, the right-of-way for East Main Street (Virginia Route 723) adjacent to the Property, and any parcel of land immediately adjacent to the Property
- 2.2 Individual members of The Boyce Crossing Conservation Easement Committee and its members shall be held harmless for their decisions related to the area under the conservation easement.

- 2.3 The Boyce Crossing Conservation Easement Committee shall include:
- One or two members of the Home Owners Association
  - One Mid-Atlantic chapter of the International Society of Arboriculture Certified Arborist, who is independent and has no conflict of interest related to the tree(s), or one professional forester, who is independent and has no conflict of interest related to the tree(s) or the HOA
  - One representative of local government
  - One representative of the Clarke County Easement Authority
- 2.4 The Boyce Crossing Conservation Easement Committee shall meet at least once a year to discuss issues related to the grove of old growth trees.
- 2.5 The Boyce Crossing Conservation Easement Committee can recommend an amendment to this agreement that protects the trees from arbitrary cutting or pruning or destruction of roots for approval by the Clarke County Easement Authority.
- 2.5.1 No tree(s) within the conservation easement shall be cut down or severely pruned without approval of The Boyce Crossing Conservation Easement Committee.
- 2.6 The Boyce Crossing Conservation Easement Committee may be dissolved with a two-thirds vote of the HOA *and* approval of the Clarke County Easement Authority.
- 2.6.1 Should the HOA default on provisions of this agreement, the conservation easement holders may assume or suspend management of the land as they see fit, and shall be held harmless for their decisions.
3. All maintenance activities related to the old growth trees and other tree(s) within the conservation easement shall be in accordance with the most up-to-date version of the American National Standards Institute (ANSI) *Standard Practices for Trees, Shrubs, and Other Woody Plant Maintenance ANSI A300*.
4. All tree care activities in the conservation easement area shall be under the direct supervision of a Mid-Atlantic chapter of the International Society of Arboriculture Certified Arborist.
5. No plant included on the Virginia Department of Conservation and Recreation list of invasive exotic species shall be used in landscaping Boyce Crossing.

- 5.1 The Boyce Crossing Conservation Easement Committee, in concert with the HOA, may alter this provision as they see fit.

Clarke Co., SC1.

This instrument of writing was produced to me on the 19th day of April, 2024 at 3:45 P. M. and with certificate of acknowledgement thereto attached was admitted to record.

Teste: Helen Buitts, Clerk