

## **GRADING, LANDSCAPE AND IRRIGATION EASEMENT AGREEMENT**

This Grading, Landscape and Irrigation Easement Agreement (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 by and between Boone County School District Finance Corporation, a Kentucky non-profit, whose address is 8330 U.S. Highway 42, Florence, Kentucky 41042 ("BCSD"), and The Drees Company, a Kentucky corporation, whose address is 211 Grandview Drive, Ft. Mitchell, Kentucky 41017 ("Drees") under the following circumstances.

**WHEREAS**, BCSD is the owner of certain property located adjacent to Ballyshannon Drive in Union, Boone County, Kentucky and more particularly described upon the attached Exhibit "A" ("BCSD Property"); and

**WHEREAS**, Drees is the owner of certain property located contiguous to the BCSD Property and more particularly described upon the attached Exhibit "B" ("Drees Property"); and

**WHEREAS**, BCSD desires to grant to Drees a non-exclusive grading, landscape and irrigation easement in, on, over and across a portion of the BCSD Property adjacent to the Drees Property for the benefit of the Drees Property, all under the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the terms and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Easement. BCSD hereby grants to Drees a perpetual and non-exclusive grading, landscape and irrigation easement (the "Easement") over and across that portion of the BCSD Property described and depicted on the attached Exhibits "C" and "D". The Easement is to allow Drees the non-exclusive right to use the easement area in order to: (i) perform grading and (ii) install and maintain landscaping and irrigation within the Easement. Additionally, Drees shall have the right to access the portions of the BCSD

Property immediately adjacent to the easement area for purposes of performing such grading and landscaping installation.

a. Maintenance. Drees, its successors and assigns, shall be responsible, at their sole cost and expense, for maintaining in a good condition, landscaping installed by it within the Easement. Drees shall, without the consent of BCSD, be permitted to assign its maintenance obligations for the Easement to a homeowner's association created for the Subdivision.

2. Covenants Running with the Land. The rights, agreements, representations, and easements set forth in this Agreement are intended to be and shall be construed as covenants running with the land by and upon, and inuring to the benefit of and enforceable by the parties hereto, their respective successors and assigns, as the case may be.

3. Indemnification. Drees shall indemnify, protect, defend, and hold harmless BCSD and its successors and assigns from and against all claims, damages, losses and liabilities and all costs and expenses associated therewith, including attorney fees arising out of any liens, property damage of any kind whatsoever, personal injury or death and any other claim occurring in connection with the installation, maintenance, and replacement of the landscaping installed within the Easement.

4. Restrictions. BCSD and its successors and assigns shall not be permitted to install any structure or plantings of any kind within the Easement which shall interfere with the use, or access of the Easement granted herein to Drees.

5. Damage to BCSD Property. If Drees or their successors and assigns damage any part of the BCSD Property in the use of the Easement, then Drees or its successors and assigns, at their sole cost and expense, shall immediately restore such damage to its original condition.

6. Severability. If any of the provisions of this Easement Agreement or the application of that provision through any person or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remaining portions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. Notices. All notices required or permitted hereunder shall be in writing, served upon the other party by hand delivery, certified mail return receipt requested, facsimile, or overnight courier, addressed to the other party at the addresses set forth in this Agreement or such other address as each party may designate by written notice to the other.

8. Amendment. This Agreement may be amended only by written agreement fully executed by the parties hereto.

9. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

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SIGNATURES ON FOLLOWING PAGES

**Boone County School District Finance Corporation**, a Kentucky non-profit corporation

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

Name:

Its:

STATE OF KENTUCKY, COUNTY OF BOONE) ss

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of Boone County School District Finance Corporation, a Kentucky non-profit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

**The Drees Company**  
a Kentucky corporation

By: \_\_\_\_\_  
Jeffrey T. Hebeler  
Assistant Secretary/Cincinnati Land

STATE OF KENTUCKY, COUNTY OF KENTON) ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Jeffrey T. Hebeler, Assistant Secretary/Cincinnati Land of The Drees Company, a Kentucky corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

This instrument prepared by: Stephen R. Hunt, Esq., Aronoff, Rosen & Hunt, LPA, 2200 U.S. Bank Tower, 425 Walnut Street, Cincinnati, Ohio 45202, (513) 241-0400.

March 21, 2023\P\Drees\Aberdeen\Grading Landscape Irrigation Easement 2.doc



## **EXHIBIT "A"**

Situate in Boone County, Kentucky and being all of Lot 862 of Ballyshannon Subdivision, Section 5 – Phase 1A, as recorded on the subdivision plat therefor recorded in Plat Cabinet 6, Slide 55 of the Boone County Clerk's records at Burlington, Kentucky.

Group Number: 5370

Plat Cabinet 6, Slide 55

Commonly known as Shamrock Avenue, Union, Kentucky 41091

PIDN: 051.05-15-862.00

## EASEMENT ACQUISITION AGREEMENT

This Easement Acquisition Agreement ("Agreement") is entered into by and between Boone County School District Finance Corporation, a Kentucky non-profit, whose address is 8330 U.S. Highway 42, Florence, Kentucky 41042 ("BCSD"), and The Drees Company, a Kentucky corporation, whose address is 211 Grandview Drive, Ft. Mitchell, Kentucky 41017 ("Drees"), and is executed on the dates corresponding to signatures below. The later date on which either BCSD or Drees sign this Agreement, shall be the Acceptance Date.

### RECITALS

A. BCSD is the owner of certain property located adjacent to Ballyshannon Drive in Union, Boone County, Kentucky and more particularly described upon the attached Exhibit "A" ("BCSD Property").

B. Drees is the owner of certain property located contiguous to the BCSD Property and more particularly described upon the attached Exhibit "B" ("Drees Property").

C. It is the intent of this Agreement for BCSD and Drees to describe the terms and conditions under which BCSD shall execute the Grading, Landscape and Irrigation Easement Agreement (the "Agreement"), which is attached hereto as Exhibit "C".

NOW, THEREFORE, the parties hereto each agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into and made a part of this Agreement, as though set verbatim.
2. **Grant of Easement.** BCSD agrees to execute and deliver to Drees the Agreement in recordable form, subject to any superior interest in the BCSD Property of record, granting to Drees the right to a perpetual and non-exclusive grading, landscape and irrigation easement on, over and across the Easement Property.
3. **Consideration.** Drees agrees to reimburse BCSD for their legal fees incurred in order to have their attorney review the Agreement.
4. **Authority.** Each party hereby represents to the other that they have all necessary authority to execute and deliver this Agreement, and to engage in all acts necessary to the consummation of this Agreement.
5. **Notices.** All notices authorized or required herein shall be and shall be considered given when sent by Registered or Certified Mail, Return Receipt Requested, to BCSD or Hickory Drees at their respective addresses as set forth above, and deposited with the U.S. Mail, with the understanding that such address may be changed by giving appropriate written notice to the other party of such change of address.

6. **Headings.** The headings of the paragraphs herein are for convenience only and shall not affect the meanings or interpretations of the contents thereof.
7. **Complete Agreement.** This Agreement represents the complete understandings between the parties hereto, and supersedes all prior negotiations, representations or agreements, either written or oral, as to the matters described herein. This Agreement may be amended only by written instrument signed by both parties.
8. **Construction.** This Agreement shall be governed and construed in accordance with laws of the State of Kentucky. This Agreement is the culmination of negotiations between the parties and, as such, is not to be construed against Drees or BCSD as the drafter hereof.
9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
10. **Parties.** The rights and obligations created by this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, administrators and assigns.
11. **Cures and Defaults.** No failure or default by either party hereto concerning any act required by it shall result in the termination of any right of either party hereunder, until such party shall have failed to remedy such failure or cure such default within thirty (30) days after the receipt of written notice of the failure to default. Receipt shall be assumed upon the earlier of actual receipt, or three (3) days after such notice is placed in the U.S. Mail.
12. **Non-Waiver.** No waiver, forbearance or failure by any party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of any such party's right to enforce such provision in the future.
13. **Default.** If BCSD, without legal cause, fails to perform any of the covenants, terms or conditions of the Agreement, Drees may immediately pursue any legal rights or remedies available at law or in equity, including the right of specific performance. In the event of litigation regarding the terms of the subject matter hereof, each party shall pay its own attorney's fees and costs.
14. **Severability.** If any term or provision hereof, or the application thereof to any person or circumstances, shall, to the extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each term, covenant, condition and provision hereof shall be valid and be enforced to the fullest extent permitted by law.
15. **Benefits and Burdens.** This Agreement shall be binding upon and inure to the benefits of each party hereto and their respective legal representatives, beneficiaries, successors and assigns.



16. **Other.**

- 16.1 This Agreement may only be amended in writing by all parties hereto.
- 16.2 This Agreement shall be binding upon the parties hereto and their respective legal representatives, beneficiaries, successors and assigns.
- 16.3 Section captions and titles are included herein for reference purposes only and are not part of the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written below. Each signatory represents and warrants that this Agreement, when executed and accepted as provided herein, shall be the valid and binding act of the party for whom he signed, enforceable according to its terms.

Boone County School District Finance Corporation, a  
Kentucky non-profit corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The Drees Company, a Kentucky corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "A"**

Situate in Boone County, Kentucky and being all of Lot 862 of Ballyshannon Subdivision, Section 5 – Phase 1A, as recorded on the subdivision plat therefor recorded in Plat Cabinet 6, Slide 55 of the Boone County Clerk's records at Burlington, Kentucky.

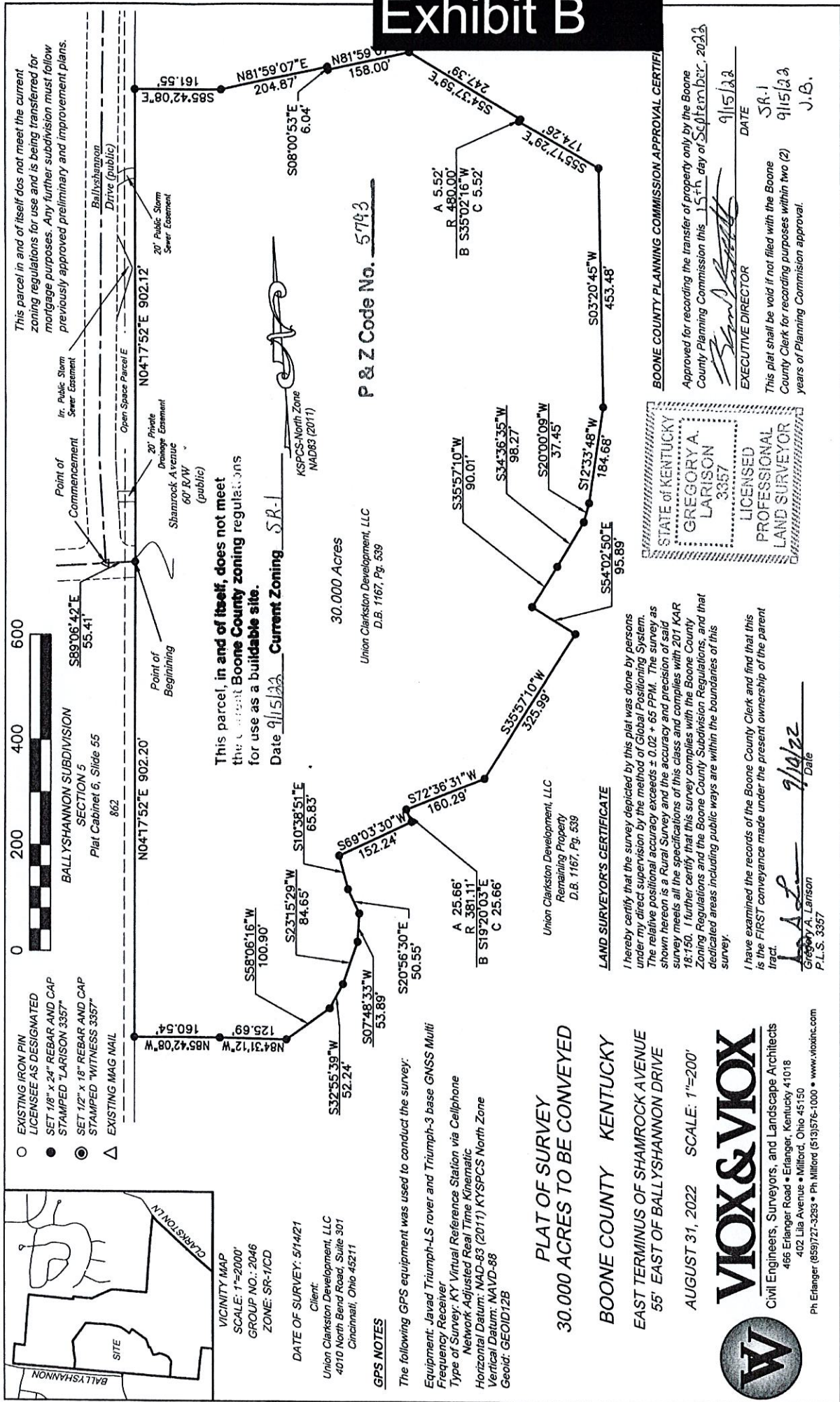
Group Number: 5370

Plat Cabinet 6, Slide 55

Commonly known as Shamrock Avenue, Union, Kentucky 41091

PIDN: 051.05-15-862.00

# Exhibit B





**GRADING, LANDSCAPE AND IRRIGATION EASEMENT AGREEMENT**

This Grading, Landscape and Irrigation Easement Agreement (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 by and between Boone County School District Finance Corporation, a Kentucky non-profit, whose address is 8330 U.S. Highway 42, Florence, Kentucky 41042 ("BCSD"), and The Drees Company, a Kentucky corporation, whose address is 211 Grandview Drive, Ft. Mitchell, Kentucky 41017 ("Drees") under the following circumstances.

**WHEREAS**, BCSD is the owner of certain property located adjacent to Ballyshannon Drive in Union, Boone County, Kentucky and more particularly described upon the attached Exhibit "A" ("BCSD Property"); and

**WHEREAS**, Drees is the owner of certain property located contiguous to the BCSD Property and more particularly described upon the attached Exhibit "B" ("Drees Property"); and

**WHEREAS**, BCSD desires to grant to Drees a non-exclusive grading, landscape and irrigation easement in, on, over and across a portion of the BCSD Property adjacent to the Drees Property for the benefit of the Drees Property, all under the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the terms and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Easement. BCSD hereby grants to Drees a perpetual and non-exclusive grading, landscape and irrigation easement (the "Easement") over and across that portion of the BCSD Property described and depicted on the attached Exhibits "C" and "D". The Easement is to allow Drees the non-exclusive right to use the easement area in order to: (i) perform grading and (ii) install and maintain landscaping and irrigation within the Easement. Additionally, Drees shall have the right to access the portions of the BCSD



Property immediately adjacent to the easement area for purposes of performing such grading and landscaping installation.

a. Maintenance. Drees, its successors and assigns, shall be responsible, at their sole cost and expense, for maintaining in a good condition, landscaping installed by it within the Easement. Drees shall, without the consent of BCSD, be permitted to assign its maintenance obligations for the Easement to a homeowner's association created for the Subdivision.

2. Covenants Running with the Land. The rights, agreements, representations, and easements set forth in this Agreement are intended to be and shall be construed as covenants running with the land by and upon, and inuring to the benefit of and enforceable by the parties hereto, their respective successors and assigns, as the case may be.

3. Indemnification. Drees shall indemnify, protect, defend, and hold harmless BCSD and its successors and assigns from and against all claims, damages, losses and liabilities and all costs and expenses associated therewith, including attorney fees arising out of any liens, property damage of any kind whatsoever, personal injury or death and any other claim occurring in connection with the installation, maintenance, and replacement of the landscaping installed within the Easement.

4. Restrictions. BCSD and its successors and assigns shall not be permitted to install any structure or plantings of any kind within the Easement which shall interfere with the use, or access of the Easement granted herein to Drees.

5. Damage to BCSD Property. If Drees or their successors and assigns damage any part of the BCSD Property in the use of the Easement, then Drees or its successors and assigns, at their sole cost and expense, shall immediately restore such damage to its original condition.

6. Severability. If any of the provisions of this Easement Agreement or the application of that provision through any person or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remaining portions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. Notices. All notices required or permitted hereunder shall be in writing, served upon the other party by hand delivery, certified mail return receipt requested, facsimile, or overnight courier, addressed to the other party at the addresses set forth in this Agreement or such other address as each party may designate by written notice to the other.

8. Amendment. This Agreement may be amended only by written agreement fully executed by the parties hereto.

9. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

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SIGNATURES ON FOLLOWING PAGES

**Boone County School District Finance Corporation**, a Kentucky non-profit corporation

By: \_\_\_\_\_  
Name:  
Its:

STATE OF KENTUCKY, COUNTY OF BOONE) ss

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of Boone County School District Finance Corporation, a Kentucky non-profit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

**The Drees Company**  
a Kentucky corporation

By: \_\_\_\_\_  
Jeffrey T. Hebeler  
Assistant Secretary/Cincinnati Land

STATE OF KENTUCKY, COUNTY OF KENTON) ss

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This instrument prepared by: Stephen R. Hunt, Esq., Aronoff, Rosen & Hunt, LPA, 2200 U.S. Bank Tower, 425 Walnut Street, Cincinnati, Ohio 45202, (513) 241-0400.

February 15, 2023\P:\Drees\Aberdeen\Grading Landscape Irrigation Easement 2.doc



### **EXHIBIT "A"**

Situate in Boone County, Kentucky and being all of Lot 862 of Ballyshannon Subdivision, Section 5 – Phase 1A, as recorded on the subdivision plat therefor recorded in Plat Cabinet 6, Slide 55 of the Boone County Clerk's records at Burlington, Kentucky.

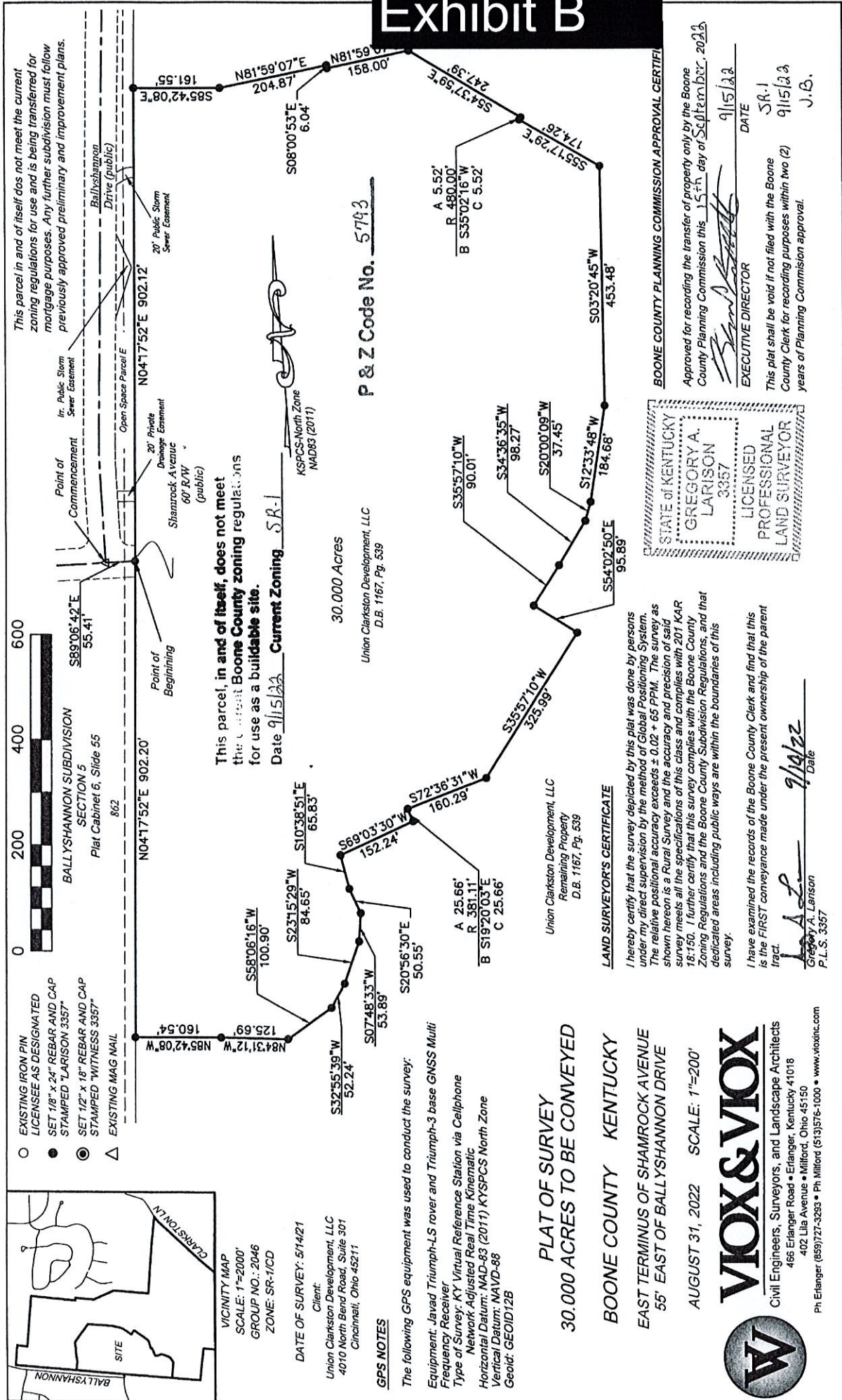
Group Number: 5370

Plat Cabinet 6, Slide 55

Commonly known as Shamrock Avenue, Union, Kentucky 41091

PIDN: 051.05-15-862.00

# Exhibit B







**VIOX & VIOX**  
Civil Engineers, Surveyors, and Landscape Architects

466 Erlanger Road | 215B Main Street,  
Erlanger, Kentucky 41018 | Milford, Ohio 45150

Tel: 859.727.3293 | Tel: 513.576.1000  
Fax: 859.727.8452

www.vioxinc.com

Exhibit C

February 15, 2023

## Grading, Landscape and Irrigation Easement Agreement

### DESCRIPTION OF 0.086 ACRE

Located in Boone County, Kentucky, lying on the south side of Shamrock Avenue at the terminus of Ballyshannon Drive and being part of Lot 862 of the Ballyshannon Subdivision, Section 5, recorded in Plat Cabinet 6, Slide 55 in the office of the Boone County Clerk at Burlington, Kentucky, and being more particularly described as follows:

**BEGINNING** at a point in the southeast right-of-way terminus of Shamrock Avenue at the most northeasterly corner of Lot 862, and in the west line of The Drees Company (Deed Book 1200, page 344);

**THENCE** with said common line S 04°17'52" W a distance of 100.18 feet to a point;

**THENCE** leaving said common line and through Lot 862 for the following 6 (six) courses:

1. N 89°06'44" W a distance of 38.26 feet to a point;
2. N 06°59'57" E a distance of 34.58 feet to a point;
3. N 04°48'37" E a distance of 17.96 feet to a point;
4. N 01°48'27" E a distance of 10.62 feet to a point;
5. N 00°44'28" E a distance of 32.47 feet to a point;
6. N 11°28'48" E a distance of 4.70 feet to a point in the south right-of-way line of Shamrock Avenue;

**THENCE** with said right-of-way line S 89°06'44" E a distance of 38.36 feet to the point of beginning containing 0.086 acres.





## **EASEMENT ACQUISITION AGREEMENT**

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### **RECITALS**

A. BCSD is the owner of certain property located adjacent to Ballyshannon Drive in Union, Boone County, Kentucky and more particularly described upon the attached Exhibit "A" ("BCSD Property").

B. Drees is the owner of certain property located contiguous to the BCSD Property and more particularly described upon the attached Exhibit "B" ("Drees Property").

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3. **Consideration.** Drees agrees to reimburse BCSD for their legal fees incurred in order to have their attorney review the Agreement.
4. **Authority.** Each party hereby represents to the other that they have all necessary authority to execute and deliver this Agreement, and to engage in all acts necessary to the consummation of this Agreement.
5. **Notices.** All notices authorized or required herein shall be and shall be considered given when sent by Registered or Certified Mail, Return Receipt Requested, to BCSD or Hickory Drees at their respective addresses as set forth above, and deposited with the U.S. Mail, with the understanding that such address may be changed by giving appropriate written notice to the other party of such change of address.

6. **Headings.** The headings of the paragraphs herein are for convenience only and shall not affect the meanings or interpretations of the contents thereof.
7. **Complete Agreement.** This Agreement represents the complete understandings between the parties hereto, and supersedes all prior negotiations, representations or agreements, either written or oral, as to the matters described herein. This Agreement may be amended only by written instrument signed by both parties.
8. **Construction.** This Agreement shall be governed and construed in accordance with laws of the State of Kentucky. This Agreement is the culmination of negotiations between the parties and, as such, is not to be construed against Drees or BCSD as the drafter hereof.
9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
10. **Parties.** The rights and obligations created by this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, administrators and assigns.
11. **Cures and Defaults.** No failure or default by either party hereto concerning any act required by it shall result in the termination of any right of either party hereunder, until such party shall have failed to remedy such failure or cure such default within thirty (30) days after the receipt of written notice of the failure to default. Receipt shall be assumed upon the earlier of actual receipt, or three (3) days after such notice is placed in the U.S. Mail.
12. **Non-Waiver.** No waiver, forbearance or failure by any party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of any such party's right to enforce such provision in the future.
13. **Default.** If BCSD, without legal cause, fails to perform any of the covenants, terms or conditions of the Agreement, Drees may immediately pursue any legal rights or remedies available at law or in equity, including the right of specific performance. In the event of litigation regarding the terms of the subject matter hereof, each party shall pay its own attorney's fees and costs.
14. **Severability.** If any term or provision hereof, or the application thereof to any person or circumstances, shall, to the extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each term, covenant, condition and provision hereof shall be valid and be enforced to the fullest extent permitted by law.
15. **Benefits and Burdens.** This Agreement shall be binding upon and inure to the benefits of each party hereto and their respective legal representatives, beneficiaries, successors and assigns.



16. **Other.**

- 16.1 This Agreement may only be amended in writing by all parties hereto.
- 16.2 This Agreement shall be binding upon the parties hereto and their respective legal representatives, beneficiaries, successors and assigns.
- 16.3 Section captions and titles are included herein for reference purposes only and are not part of the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written below. Each signatory represents and warrants that this Agreement, when executed and accepted as provided herein, shall be the valid and binding act of the party for whom he signed, enforceable according to its terms.

Boone County School District Finance Corporation, a  
Kentucky non-profit corporation

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Drees Company, a Kentucky corporation

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT "A"**

Situate in Boone County, Kentucky and being all of Lot 862 of Ballyshannon Subdivision, Section 5 – Phase 1A, as recorded on the subdivision plat therefor recorded in Plat Cabinet 6, Slide 55 of the Boone County Clerk's records at Burlington, Kentucky.

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