

Tax Map & Parcel Nos.:
5-33 11.00 90.00-91.00;
5-33 11.00 339.00-372.00;
5-33 12.00 14.00; and
5-33 12.00 297.00-364.02 (all inclusive)
Prepared by & Return to:
Steen, Waehler & Schrider-Fox, LLC
92 Atlantic Avenue, Unit B
P.O. Box 1398
Ocean View, DE 19970
MRSF

**AMENDED & RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SWANN ESTATES**

WHEREAS, the Swann Estates residential community located in Baltimore Hundred, Sussex County, Delaware, and all lot owners therein are bound by a Declaration of Covenants, Restrictions and Conditions of record at the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Deed Book 1485, Page 222, et seq., as subsequently amended by an amendment recorded in Deed Book 1526, Page 200; an amendment recorded in Deed Book 1568, Page 319; an amendment recorded in Deed Book 1735, Page 333, et seq.; an amendment recorded in Deed Book 4137, Page 194, et seq.; and an amendment recorded in Deed Book 4465, Page 213, et seq. (hereinafter collectively referred to as the "Declaration"); and

WHEREAS, the lots and common areas comprising the Swann Estates residential community are more particularly described in the subdivision plats recorded in Plot Book 37, Page 5; Plot Book 39, Page 287; Plot Book 40, Page 20; Plot Book 40, Page 124; Plot Book 42, Page 53; Plot Book 44, Page 196; Plot Book 46, Page 55; Plot Book 56, Page 109; Plot Book 65, Page 250; and Plot Book 216, Page 55; and

WHEREAS, all lot owners in the Swann Estates residential community are members of the Swann Estates Homeowners Association, Inc. ("Association"), a Delaware non-stock corporation; and

WHEREAS, more than two-thirds (2/3rds) of the members of the Association have determined that it is necessary and desirable to make amendments to various sections of the Declaration concerning voting (Article II, Section 2), the use of ponds (Article IV, Section 3(e)), initial assessments (Article V, Section 5), approval of plans and specifications (Article VI, Section 6), sanitation (Article VI, Section 8), signs and advertising (Article VI, Section 9), garbage receptacles (Article VI, Section 11), fences (Article VI, Section 14), nuisances (Article VI, Section 15), parking spaces (Article VI, Section 20), and other appurtenances and appendages (Article VI, Section 22); and

WHEREAS, due to the number of changes made to the Declaration in previous years and the number of changes just recently approved by the Association membership, the Association desires to place of record a single document that restates all provisions of the Declaration that remain unchanged and that integrates all of the amendments lawfully made as of the date of this recording; and

WHEREAS, any interested Association member or other interested person may review the original Declaration and all previous amendments, the recording information for which is recited above and all of which are a matter of public record and available at the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware.

NOW THEREFORE, pursuant to the authority provided in Article VII, Section 1 of the Declaration, more than two-thirds (2/3rds) of the members of the Association have given their written consents, copies of which are attached hereto as Exhibit "A" and incorporated herein by reference, to hereby amend and restate the Declaration of Covenants, Conditions and Restrictions for Swann Estates as follows:

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made and executed this 15th day of April, 1987, by Cygnet Construction Corporation, a corporation, of the State of Delaware, of Box 50, Selbyville, Delaware 19975, (hereinafter referred to as the Developer).

WITNESSETH:

WHEREAS, the Developer is the fee simple owner of certain real property located in Baltimore Hundred, Sussex County, Delaware as plotted on the subdivision plan of Swann Estates dated November, 1986, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book 37 at page 5 (hereinafter referred to as the "Recorded Plot"¹), and as further described in Exhibit "A," hereinafter referred to as the "Property," and desires to develop therein a residential community;

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of common lands and facilities and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens (hereinafter referred to collectively as the "Restrictions"), as hereinafter set forth, for the benefit of the Property and each owner thereof;

WHEREAS, the Developer has deemed it desirable for the efficient preservation of values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the roads, the common lands, the ponds, and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created;

WHEREAS, the Developer will incorporate under the laws of the State of Delaware, as a nonprofit corporation, the Swann Estates Homeowners Association, Inc., or a similar named corporation, for the purpose of exercising the functions aforesaid, subject to all exceptions contained herein.

NOW, THEREFORE, the Developer hereby declares that the following Restrictions shall run with, burden and bind the Property; and the Developer hereby declares the Property, as described in Exhibit "A," and as plotted on the Recorded Plot is and shall be held, transferred, sold, conveyed, occupied and used subject to the restrictions hereinafter set forth, during the period of time hereinafter set forth; and subject to all easements, rights of way and restrictions

¹ The footnote in the original Declaration concerning land reserved for future development has been omitted in light of the development of said reserved land and its inclusion in Swann Estates. The subdivision plats describing Swann Estates as of this date, including the development of reserved land, are recorded in Plot Book 37, Page 5; Plot Book 39, Page 287; Plot Book 40, Page 20; Plot Book 40, Page 124; Plot Book 42, Page 53; Plot Book 44, Page 196; Plot Book 46, Page 55; Plot Book 56, Page 109; Plot Book 65, Page 250; and Plot Book 216, Page 55.

previously placed upon the property as recorded in the Office of the Recorder of Deeds, in and for Sussex County by the Developer or its predecessors in title.

ARTICLE I

Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

A. "Association" shall mean and refer to the Swann Estates Homeowners Association, Inc., or such other nonprofit corporation as the Developer shall form its successors and assigns.

B. "Common Areas" shall mean and refer to those areas of land designated on the plot which is recorded in Plot Book 37 at page 5, and incorporated herein by reference as: (1) The roads shown upon the Recorded Plot and therein designated as: Cygnet Drive, Crane Road, Sea Gull Road, Sandpiper Lane, Egret Road; (2) The open areas shown on the Recorded Plot designated public area; (3) All areas shown on the Recorded Plot as pond or proposed pond, subject however to the Developer's rights to dig and complete the ponds and to obtain all borrow therefrom as retained property of the Developer. All said Common Areas shall be subject to the restrictions, created hereunder, and shall be subject to all restrictions, easements or rights of way previously granted by the Developer or its predecessors in title.

C. "Developer" shall mean and refer to Cygnet Construction Corporation, and its successors or assigns.

D. "Lot" shall mean and refer to any unimproved or improved plot of land intended and subdivided for a detached single family residence, shown upon the Recorded Plot as a numbered parcel but shall not include the "Common Areas" as hereinabove defined.

E. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 of this Declaration.

F. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.

G. "Owner" shall mean and refer to the record owner, whether one or more person or entities, holding a fee simple title to any Lot but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgage or holder has acquired title pursuant to foreclosure of any proceeding in lieu of foreclosure.

H. "Recorded Plot"² shall mean and refer to a plot of the subdivided property of record in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book ____ at page ____,³ such plot describes and depicts the property as subdivided into lots, Common Areas.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot, which is subject to assessment or shall be eligible for a later assessment shall be a Member of the Association, provided, however, that any such person or entity who holds such interest merely to secure performance for an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, which is subject to assessment. Provided, however, that the Developer shall be considered an Owner of each Lot held by the Developer whether such Lot or Lots are or are not subject to assessment.

Section 2. The Association shall have one class of voting membership.

(a) Class A members shall be all lot Owners who shall be entitled to one (1) vote for each Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote of such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Developer shall be entitled to one (1) vote for each lot retained and titled in the Developer.

(b) Proxies. A member may appoint any other member as his or her proxy in order to vote on an issue to be discussed at a meeting. Any proxy must be in writing, preferably on the established proxy form provided by the Association; signed by the member; and filed with the Secretary before the appointed time of the meeting.

(c) Member in Good Standing. A member in good standing is defined as a member whose (1) regular and special assessments are not delinquent and/or (2) lot or improvements thereon or use of the lot or improvements thereon or use of common areas or other action is not in violation of the Declaration or on record with the Board. In the case of delinquent assessments, the member may pay their debt in full prior to the start of the annual meeting in order to have voting rights on any/all matters put forward at the meeting.

² The footnote in the original Declaration concerning land reserved for future development has been omitted in light of the development of said reserved land and its inclusion in Swann Estates. The subdivision plats describing Swann Estates as of this date, including the development of reserved land, are recorded in Plot Book 37, Page 5; Plot Book 39, Page 287; Plot Book 40, Page 20; Plot Book 40, Page 124; Plot Book 42, Page 53; Plot Book 44, Page 196; Plot Book 46, Page 55; Plot Book 56, Page 109; Plot Book 65, Page 250; and Plot Book 216, Page 55.

³ Blanks are empty as in original Declaration.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION

Section 1. Existing Property. The real property subject to this Declaration is all that property located in Baltimore Hundred, Sussex County, Delaware as plotted on the Recorded Plot⁴ and made a part hereof and as described in Exhibit "A"; and this Declaration and the lands subject to this Declaration shall also be subject to restrictions, easements, or rights of way previously granted by the Developer or its predecessors in title as recorded In the Office of the Recorder of Deeds in and for Sussex County.

Section 2. Mergers. Upon a merger or consolidation of the Association with another association as provided In its Certificate of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the association as a surviving corporation pursuant to a merger; provided, however, that such merger shall have been approved by a vote of two-thirds (2/3) of the Class A membership, at a meeting duly called for such purpose. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation or change to the covenants established by this Declaration within the Property.

Section 3. Additions to the Swann Estates Subdivision by the Association. Class A members of the Association may make additions to the Swann Estates Subdivision, provided any such additions of land to the Swann Estates Subdivision are approved by a two-thirds (2/3rds) vote of all Class A members made at a meeting held in accordance with the by-laws of the Association. Such annexation shall be effectuated by filing for record among the Land Records of Sussex County, Delaware, an Amendment to the Restrictions with respect to such additional lands.

The Developer reserves the right to annex additional land into the Swann Estates subdivision. The areas marked "Reserved for Future Development" on the Record Plot and any land adjacent to the subdivision, if acquired by the Developer, may be subdivided and annexed into the Development. Such annexation shall be effected by filing a plot plan and an amendment to the Restrictions among the land records of Sussex County, Delaware.

⁴ The footnote in the original Declaration concerning land reserved for future development has been omitted in light of the development of said reserved land and its inclusion in Swann Estates. The subdivision plats describing Swann Estates as of this date, including the development of reserved land, are recorded in Plot Book 37, Page 5; Plot Book 39, Page 287; Plot Book 40, Page 20; Plot Book 40, Page 124; Plot Book 42, Page 53; Plot Book 44, Page 196; Plot Book 46, Page 55; Plot Book 56, Page 109; Plot Book 65, Page 250; and Plot Book 216, Page 55.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owner's Easement of Enjoyment. Subject to the provisions of Section 3, of ARTICLE IV, every Owner shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Areas. The Developer shall convey legal title in the Common Areas to the Association. The Developer shall retain legal title in the Common Areas: (1) until such time as it has completed improvement thereon; (2) until such a time as, in the opinion of the Developer, the Association shall be able to maintain the same; and (3) the Developer shall specifically retain title and all rights to the areas shown on the Recorded Plot as ponds or proposed ponds until all useable borrow is removed, and all such proposed borrow shall be titled and remain the property of the Developer. Notwithstanding any other provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey all its right, title and interest in the Common Areas to the Association, subject to all previous restrictions of record and this Declaration no later than two years after the last conveyance of a lot in Swann Estates to a bona fide purchaser of value.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association as provided in its Certificate of Incorporation and by-laws, to suspend the enjoyment rights of any Member in any easement or in any Common Areas, for any period during which any assessment against such Member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.

(b) The right of the Association and/or the Developer to dedicate or transfer all or any part if its interest in the Common Areas (subject to easements created hereunder, or previously created of record) to any public agency, authority or utility.

(c) The right of the Developer prior to the conveyance of the Common Areas to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for water, sewer, drainage, gas, electricity, telephone, cable television and other utilities.

(d) The right of the Association to adopt rules and regulations governing the use of the Common Areas.

(e) Restrictions on the use of ponds. No owner or guest or person shall operate a boat or vessel on the ponds powered by an internal combustion engine. The types and number of

vessels operated on the ponds are subject to restrictions by rules and regulations adopted by the Association. No use of the ponds shall be made by any person except members and members' family and guests when proper ID is visible (i.e., fishing badge with name and lot #). The Association will post the ponds with "no trespassing" signs until they may be used. Any use of the ponds by the person is at the risk and peril of the user and any user expressly waives any claims for liability or damages resulting from said use as to the Developer, the Association and all members of the Association.

Section 4. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas and facilities to the members of his family, tenants, or contract purchasers (and members of the family of any tenant or contract purchaser) who reside on the property or to such other persons as may be permitted by the Association.

Section 5. Obligations of the Association. The Association shall:

- (a) Operate, maintain, repair and reconstruct, for the use and benefit of all Members of the Association, all Common Areas and facilities and improvements developed thereon.
- (b) Maintain and install all facilities on, mow the grass on, replace all dead or destroyed landscaping on, all Common Areas.
- (c) Maintain, repair, improve and reconstruct the roads.
- (d) [Deleted.]
- (e) Maintain, operate and control the ponds after conveyed to the Association by the Developer.

ARTICLE V

COVENANT FOR MAINTENANCE

Section 1. Creation of Lien and Personal Obligation of Assessments. The Developer, for itself and its successors and assigns, and for each lot within the Property hereby covenants, and each Owner of any lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) annual assessments or charges and (2) special assessments, for capital improvements, operations, repair, replacement and reserve funds, such assessments to be fixed, established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, for the collection thereof, shall also be the personal obligation of the person who was the Owner of

such property at the time when the assessment fell due. A personal obligation for delinquent assessment shall not pass to the owner's successor in title (other than as a lien on the land), unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, including the enforcement of these restrictions, and particularly for the improvement and maintenance of the Common Areas located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, for the payment of taxes and insurance thereon, for repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon.

Section 3. Basis and Maximum and Annual Assessment. Each respective Lot to be sold by the Developer, if and as conveyed by the Developer after the final date of transfer from the Developer to any Owner, shall thereafter be subject to assessments to be paid to the Association. The amount of such assessment shall be fixed by the Association and shall be charged or assessed in equal proportions against each Lot within the Property. The first assessment year shall be January 1, 1987 and thereafter each annual assessment shall be made for each subsequent calendar year commencing as of January 1 each year. Each yearly assessment shall be due and payable on or before ninety (90) days after it has been fixed and levied. It shall be the duty of the Association to notify all Owners, whose addresses are listed with the said Association within thirty (30) days after said assessment has been fixed or levied, giving the amount of the charge of the assessment for said year, when due and the amount due on each lot or parcel of land owned by each such Owner. Failure of the Association to levy the assessment or charge for any one year shall not affect the right of the Association to do so for any subsequent year. Until changed, the annual assessment commencing January 1, 1987, on lots conveyed by the Developer is fixed at One Hundred Dollars (\$100.00) per annum.

Section 4. Establishment of Annual Assessment Rate. The Board of Directors of the Association may, after consideration of current operation costs, current maintenance costs, and future needs of the Association, fix the annual Assessment.

Section 5. Initial Assessment. In addition to the annual assessment and special assessments, an initial assessment is hereby established, which shall be paid upon the conveyance of each lot to a third party purchaser for value, whether such conveyance is an initial conveyance from the Developer or a subsequent resale. The amount of such initial assessment is set at Two Hundred and Fifty Dollars (\$250.00). The Association may use the initial assessments collected to pay the cost of any obligations to maintain the Common Areas of the Association.

Section 6. Special Assessment for Capital Improvements and Operating Reserves. In Addition to the Annual Assessment authorized by Section 3 hereof the Association may levy in any assessment year a special assessment (which may be fixed at one uniform rate for each Lot) applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or for operating the Common Areas or for any other cost related to the Common Areas or these restrictions, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Class A membership.

Section 7. Date of Commencement Assessment; Date Due. The annual assessment as to any Lot shall commence on the conveyance of such lot, prorated for the remaining portion of said year, providing such conveyance is after January 1, 1987. In the event a Lot is conveyed prior to January 1, 1987, the annual assessment will commence on January 1, 1987. The due date of any special assessment under Section 6 hereof shall be fixed in any resolution authorizing such assessment.

Section 8. Effect of Nonpayment of Assessment. The Personal Obligation of the Owner: the Lien; Remedies of the Association. If any Assessment is not paid on the date when due as hereinabove provided then such Assessment shall be deemed delinquent and shall together with such interest thereon and cost of collection, including reasonable attorney's fees, thereof as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of the delinquency at the rate of the legal interest rate authorized by 6 Del. C. § 2301 as amended and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the lot; and in the event a judgment is obtained, such judgment shall include interest on the Assessment above provided and reasonable attorneys' fees to be fixed by the court together with the cost of action. No Owner of a lot may waive or otherwise escape liability for the Assessment provided for herein by nonuse of the Common Areas or abandonment of his or its lot.

Section 9. Subordination of the Lien to the First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on any Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Property Exempt From Assessment. The following property, subject to this Declaration, shall be exempted from the assessments, charges and liens created herein:

(a) All properties dedicated to and accepted by a government body, agency or authority and devoted to public use;

(b) All Common Areas;

(c) All lots owned by the Developer and not deeded by the Developer to third persons until January 1, 2000. Thereafter said lots will be subject to the assessments of the Association.

ARTICLE VI⁵

RESTRICTIVE AND PROTECTIVE COVENANTS

Section 1. Utility Easements. The Developer, for it, its successors and assigns and for the Association hereby reserves the right to grant easements over, under, in, on and through the Common Areas and all roads, plotted and shown on the Recorded Plot for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation, inspection of sewer, drainage, electric, gas, television, telephone and cable telephone and television facilities and wires, lines, conduits and other necessary and proper attachments in connection therewith, for the benefit of the adjoining land owners, the Developer, any federal, state or local authority, commission or agency having jurisdiction thereover or any corporation, either public, quasi-public or private, supplying or serving such facilities.

Section 2. Utility Easements; Prior Restrictions. The properties are subject to all those prior easements, rights of way and restrictions placed upon the Property by the Developer's predecessors in title as such be recorded among the land records in the Office of the Recorder of Deeds in and for Sussex County. All utility easements shown on the Recorded Plot are incorporated by reference.

Section 3. Residential Use. All numbered lots in the Property, as shown on the Recorded Plot shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain upon any such Lot other than one (1) detached single family dwelling, with attached garage building or carport (hereinafter sometimes referred to as the main dwelling). The use of any such main dwelling shall not include any activity normally conducted as a business.

Section 4. Restrictions as to Types of Construction, Prohibiting Mobile Homes. No trailer, mobile home, double wide or similar type structure, which moves to a building site on wheels attached to its own under carriage, tent, shack, garage, barn or other type outbuildings

⁵ The footnote in the original Declaration concerning land reserved for future development has been omitted in light of the development of said reserved land and its inclusion in Swann Estates. The subdivision plats describing Swann Estates as of this date, including the development of reserved land, are recorded in Plot Book 37, Page 5; Plot Book 39, Page 287; Plot Book 40, Page 20; Plot Book 40, Page 124; Plot Book 42, Page 53; Plot Book 44, Page 196; Plot Book 46, Page 55; Plot Book 56, Page 109; Plot Book 65, Page 250; and Plot Book 216, Page 55.

shall at any time be used as a residence temporary or permanently, and no trailer, mobile home, double wide, tent, shack, garage, or barn, shall be utilized as a main or single family dwelling unit on any lot as shown on the Recorded Plot. Construction of residential dwellings and accessory buildings shall be limited to custom, stick built, prefabricated or modulars, subject to limitations on modular construction as hereinafter stated. Modular homes defined by way of illustration as a dwelling structure constructed with one or more modules and hauled to the site as component parts of a proposed structure are not prohibited, providing however that each modular main dwelling has an attached two car garage with closeable doors, and provided further that the location of modular houses is subject to the provisions of Article VI, Section 6(b).

Section 5. Restriction Against Business Use. No numbered lot within the Property shall be used at any time to conduct business, or for the conduct on said Lot of any trade or business of any description nor shall said premises be used for any purpose whatsoever except for the purpose of private dwelling or residence. No building shall be used as a residence until the exterior is fully completed, according to the plans and specifications approved therefor, as such approval is hereinafter provided. No one shall reside on any lot, casually, temporarily or permanently except in a dwelling house, completed according to the plans and specifications approved as hereinafter provided. The restriction is subject to the provisions of Section 25 of Article VI.

Section 6. Approval of Plans and Specifications Required. All plans for any building, garage, shed, gazebo, exterior structure, fence, wall or any other improvement or structural modification upon a property (Lot) must be submitted to and approved by the Architectural Review Committee (ARC) which is appointed by the Association through its Board of Directors. These plans must be submitted to and approved by the ARC prior to the commencement of said project. The (ARC) shall provide the necessary paperwork to be completed by the builder/homeowner. Plans and specifications shall be comprehensive: showing the nature, kind, shape, height, materials, floor plans, exterior architectural scheme, location and frontage on the Lot, approximate cost, and details regarding the grading and landscaping of the Lot to be built upon. At a minimum, the standards to be required by the ARC shall be as follows:

(a) All roofs shall be at a minimum 5/12 feet pitch.

(b) Modular homes or standardized homes which are of the same design as existing homes on adjoining lots may be rejected to prevent duplicity by design.

The Association, its successors and assigns, shall have the right to refuse approval of any such plans or specifications, grading, and landscaping if deemed not suitable or desirable in its successor's opinion for aesthetic or other reasons. The Association will also have the right to consider the harmony thereof with the surroundings and the effect of said improvements, erections, alterations, or changes upon the adjacent or neighboring property, and any factors

which in its opinion would affect the desirability or suitability of the submitted request. The final decision of approval/disapproval shall rest with the Association, its successors, and assigns (Swann Estates Board of Directors).

Section 7. Resubdivision. No lot as shown upon the Recorded Plot shall be resubdivided, sold, or otherwise alienated in a lesser or smaller parcel, except in accordance with a supplemental plot plan thereof being approved by the Association or its successors and recorded in the Office of the Recorder of Deeds, in and for Sussex County at Georgetown, Delaware.

Section 8. Sanitation. [Deleted.]

Section 9. Signs and Advertising Regulated. No signs, notices or advertising matter of any nature or description shall be erected, used or permitted upon any of the Lots, shown on the Plan, unless erected after securing written permission of the Association or its successors or assigns. The Developer/Homeowner, however, retains the right to erect signs on any Lot to advertise said Lot for sale in addition to home security system signs. The following temporary signs: contractor contact information; and lawn care warning signs after treatments are permitted for a period not to exceed 2 weeks. Unapproved signs will be removed at the expense of the Lot owner and collectible in the same manner as assessments hereunder.

Section 10. Setback Restrictions-Height Limitation.

(a) The building setback requirement, height limitations, and permitted accessory use, shall be as provided by the Zoning Ordinance of Sussex County for the zoning district in which the lands are located, as such may be amended from time to time.

(b) In the event there is no Zoning Ordinance covering the property, the building setback requirements, height limitations and accessory uses shall be established by the Architectural Review Committee of the Association.

Section 11. Garbage Receptacles. Each lot shown on the recorded plot shall provide receptacles for garbage and trash in a screened area or an area not generally visible from any interior road, as shown on the recorded plot, or provide underground garbage receptacles or similar facilities in accordance with reasonable standards established by the Association or its successors or assigns. Trash and recyclable containers may be placed by the side of the road on trash collection day, but shall be returned to their regular storage location in a timely manner, within 24 hours following trash collection day. The Association may from time to time adopt rules and regulations concerning the disposal and removal of trash, which may include, but not be limited to, entering into a trash removal contract for the entire community including the designation of the persons negotiated by the Board of Directors for garbage/trash collections and disposal and all owners who use such services shall be bound thereby.

Section 12. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view; but same may be installed within the main dwelling, or within an enclosed garage or buried underground or properly screened from view providing the method of screening is approved by the Association.

Section 13. Construction and Demolition. Once construction or demolition of any building has been commenced on any Lot such construction or demolition shall proceed without delay until the same is completed except where such completion is impossible or results in great hardship to the owner or builder due to strikes, fires, national emergencies or national calamities. Cessation of work upon the construction or demolition of any building once started and before completion thereof for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed or demolished state and shall be deemed to be a public nuisance. In the event construction plans have been approved pursuant to Section 6, construction must commence pursuant to said approved plans within one (1) year of the date of approval. Failure to commence construction within one (1) year of the date of approval of plans will void the approval.

Section 14. Fences. No boundary fence or wall shall be constructed to a height of more than four (4) feet. No wall or fence of any height shall be constructed upon any Lot until the height, design and approximate location thereof has been approved in writing by Architectural Review Committee (see Article VI, Section 6 regarding approval of plans and specifications). Chain link dog runs and snow fences are prohibited. There shall be no fence between the street and the property line or elsewhere in the front yard. Fences approved must be properly maintained at all times be kept in an acceptable condition. For example; proper maintenance means that a fence must be free of mold and mildew; stained; painted and repaired if needed.

Section 15. Nuisances. Each Owner shall keep such Owner's Lot and all improvements located on the Lot in good order, appearance, condition and repair and in a clean and sanitary condition, i.e. free from algae and mildew, including without limitation all necessary grounds maintenance. Each Owner shall perform this responsibility in such a manner as to not unreasonably disturb or interfere with the other Owners. If any Owner fails to keep such Owner's Lot in as good repair, appearance and condition as when acquired (normal wear and tear excepted) and in a neat and orderly condition, then the Board of Directors may, pursuant to resolution, give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to rectify the condition within thirty days after the date the notice is given, or such shorter period as may be specified in the notice if the circumstances warrant a shorter period, the Board of Directors shall have the right, pursuant to any resolutions adopted by the Board of Directors, to rectify that condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred in rectifying that condition shall be assessed against such Owner. If such Owner fails to reimburse the Association within thirty days after receipt of a statement for such expenses from the Board, then the indebtedness shall constitute a lien against the Lot and collectible in the same

manner as assessments hereunder. The Owner may contract with a third party, including the Association, to perform the Owner's responsibility for upkeep under this section.

All Lots and yards shall be maintained in a neat and attractive manner so as not to detract from the appearance of the Properties. In addition, dumping grass clippings, leaves and other debris in drainage ditches, ponds or empty lots within the Community is prohibited. Any costs incurred to remove any materials dumped in violation of the foregoing prohibition shall be assessed against the violating Owner and shall constitute a lien against said Owner's Lot and be collectible in the same manner as assessments hereunder.

No noxious or offensive activity shall be permitted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the Property. There shall not be maintained upon any Lot any plant, animal, device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the Property. Specifically included under this Section is the prohibition against any livestock being kept on any Lots. The keeping of any nondomestic animals shall be deemed a nuisance per se under this Section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly, or unpleasant, shall not be prohibited under this Section.

Section 16. Landscaping. No landscaping, shrubs or trees to be placed on or removed from any lot in conjunction with the erection of any main dwelling shall be placed or cut, until complete and comprehensive landscaping plans shall be submitted to and approved in writing by Association through its duly designated Architectural Review Committee. The land area not occupied by structures, hard-surfacing, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Review Committee of the Association. Such standards will take into consideration the need for providing effective site development to:

- (a) enhance the site and building,
- (b) screen undesirable areas or views,
- (c) establish acceptable relationships between buildings, parking and adjacent properties,
- (d) control drainage and erosion, and
- (e) establish the maximum height of trees and other landscaping barriers on all lots to preserve and enhance views.

Section 17. Weeds and Undergrowth. No noxious weeds, undergrowth or accumulated trash of any kind shall be permitted to grow or maintain upon any lot by the owner or occupier

thereof. The Association, its successors and assigns reserves the right to notify the owner or occupier to cut and/or remove any such offending growth or trash. Within thirty (30) days of the giving of notice in writing by the Association to the owner or occupier of any lot to remove trash or control undergrowth of weeds and, if the owner or occupier shall fail or neglect of comply with any notice, then in such an event, the Association or its successors shall be empowered to enter upon such lot, together with such assistance and equipment as may be required, and thereupon to cut and/or remove the same, all without being deemed a trespasser, and all at the expense of the owner of said lot. Any expense incurred by the Association or its successors in conjunction with this Section, shall be billed to the owner, and the owner agrees to remit same within thirty (30) days of billing. Failure to remit within thirty (30) days of such bill, on the receipt thereof by the owner, shall entitle the Association, its successors or assigns to bring suit for such charges; and in any such suit the Association shall be entitled to treble the amount of such expenses it has incurred, plus the costs of said suit, and the reasonable attorneys' fees, incurred by it, in enforcing this restriction. By the acceptance of any lot in the subdivision, each owner thereof, hereby accepts this Section, and agrees that the treble damages and reasonable attorneys' fees to collect same, for nonremittance of the expenses of the Association, its successors and assigns incurred to remove trash or noxious growth is reasonable and will constitute liquidated damages for the cost and expense of the Association, its successors and assigns in enforcing this restriction through litigation. This Section and any part hereof shall not be construed as an obligation on the part of the Association or its successors and assigns to provide garbage or trash removal services, nor shall it be construed as an obligation upon the Association to remove the underbrush or rubbish or to cut grass or brush from any of the lots in the subdivision, after same have been outconveyed by the Developer. However, the Association, its successors and assigns reserve the right and privilege to enter upon any said lot for the purposes as set forth herein, being to maintain the appearance of any lots so as not to cause detriment to the community at large.

Section 18. Minimum Cost of Construction. The minimum permissible construction cost of any main building constructed on any lot, shown on the Recorded Plot shall be forty-five dollars (\$45.00) per square foot. The minimum permissible construction cost per square foot shall be adjusted on the date of the start of construction of any Lot by the amount by which the cost of living average for the year in question as reflected by the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (revised Series) (CPI-W) (1967 equals 100) of the U. S. Department of Labor's Bureau of Labor Statistics shall have changed percentage wise since September 1, 1986.

Section 19. Minimum Size. No main dwelling shall be erected or used on any lot, the square footage of which shall be less than one thousand five hundred square feet (1,500 sq. ft.), exclusive of all porches, breezeways, carports, garages and terraces, stoops and the like. In the event of a multi-level or multi-story dwelling, at least one floor of such dwelling shall contain a minimum square footage of eight hundred fifty square feet (850 sq. ft.), and the overall

dimensions shall be a minimum of one thousand five hundred square feet (1,500 sq. ft.), exclusive of all porches, breezeways, carports, garages and terraces, stoops and the like.

Section 20. Parking spaces. Each main dwelling unit or each lot shall have, at a minimum, a (2) car attached garage and shall also provide space for parking at least two (2) automobiles off the private roads of the subdivision prior to occupying any dwelling constructed on any lot. There shall be no storage of trailers, commercial vehicles or commercial trucks upon any lot or on the roads of the subdivision unless placed within a garage. Boats/Watercraft and watercraft trailers shall only be permitted in the community in accordance with the following: From the period of April 15th to October 15th each year, Boats/Watercraft may be kept in the driveway of a main dwelling unit to accommodate seasonal, periodic use on the waterways in this area. Any Boat/Watercraft must stay on the driveway or in the garage and with the trailer at all times. No Boat/Watercraft may be placed on any grass areas anywhere in the community. All Boats/Watercraft and trailers must be removed from the community by the 15th of October each year, after which time they will be considered to be unlawfully stored in violation of this restriction. Any Boats/Watercraft and/or Watercraft trailers unlawfully stored or otherwise parked/stored in violation of this restriction shall be subject to removal by the Association. All costs of removal shall be assessed against the violating Owner and shall constitute a lien against said Owner's Lot and be collectible in the same manner as assessments hereunder. This restriction shall not prohibit the temporary parking of commercial trucks supplying goods and services to residents of the subdivision. There shall be no parking of any kind of vehicles, except by permit issued by the Board of Directors of the Homeowners Association, on any of the internal streets of the subdivision.

Section 21. Exterior Lights. Exterior lights not attached to a permissible main structure placed or erected, and maintained on any lot set forth in the Recorded Plot, shall not be in excess of eight (8) feet in height above ground level. In no event shall any vapor or security exterior lights be placed on any lot in the subdivision, whether attached, or not attached, to any building pursuant to these restrictions.

Section 22. Other Appurtenances and Appendages. No exterior appendage or apparatus, by way of illustration and not limitation, the following: clothes lines, flag poles, statues, monuments, storage sheds, basketball hoops, pools and any other man-made facility shall be installed or maintained unless approved in writing by the Architectural Review Committee (ARC), with the exception of satellite dishes and antennas.

Shed sizes may not exceed 12' x 16'. Shed roofs and siding must match the main dwelling. Sheds placed on a permanent pad must comply with County regulations regarding setbacks. They may not be placed in front of the main dwelling and must be landscaped. Metal sheds are prohibited. No more than one (1) shed and one (1) gazebo are permitted on a lot and must be approved by the ARC. Flagpoles for individual owners will not be prohibited with the following restrictions: height cannot exceed 16', must be maintained and landscaped. Flags

allowed are: American, State, sports, military or beach oriented. Political, foreign or derogatory flags, as determined by the Board of Directors in its sole discretion, are prohibited. There will be no flags authorized for common areas.

Section 23. Restrictions on Fill. Certain lots within the property have been designated as federal wet lands. The lots subject to a federal wet land designation at the time of recording of these restrictions are lot numbers 27 through 41. Any lots designated a federal wetlands lot shall not be filled, as defined by applicable Federal Wetlands Regulations, without a permit from the United States Army Corps of Engineers.

Section 24. Wetland Construction. No construction of any nature shall be permitted on any portion of any numbered lot designated or found to be within the jurisdiction of the United States Corps of Engineers or the Delaware Department of Natural Resources and Environmental Control, Wetland Section, without: (i) obtaining approval of such proposed construction from the ARC; and (ii) obtaining a permit, if required, from the agencies for such construction activity.

Section 25. Survey and Deed Restrictions. On the sale and closing of each of lot numbers 27 through 41, the purchaser shall obtain prior to settlement an individual lot survey which will stake, locate and mark on each lot the 404 Federal Wetlands and State Wetlands lines. Deeds for lots 27 through 41 will contain the language contained in Article VI, Section 23 and 24 hereof for those lots containing 404 Federal Wetland and/or State Wetlands.

Section 26. The provisions of Article VI, Sections 3, 4, 5, 9, 10, 13, 14, 18, and 19 shall not apply to Common Areas.

Section 27. Until the proposed pond adjoining lot numbers 4, 5, 6, 7, 8, 9, 11, 12 and 13 is fully completed, as announced in writing by the Developer, lot numbers 1 through 13 shall be exempt from these restrictions. The Developer specifically reserves the right to locate a temporary road in the area proposed for lot numbers 1 through 13 to be used for the hauling of borrow from the subdivision of Swann Estates for commercial use and resale. Developer reserves the full right to use the area east of Cygnet Drive and south of Egret Road as a commercial borrow pit area until the proposed pond located therein is conveyed to the Association.

ARTICLE VII

General Provisions

Section 1. Duration and Amendment. The Restrictions of this Declaration run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, as the case may be in perpetuity; subject, however, to the provision that

the Association or its successors, by and with the vote or written consent of two-thirds (2/3) of the then Owners of the Lots, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these Restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or addition shall take effect when a copy thereof executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgement of deeds, together with written consents of the requisite number of Owners, has been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

Section 2. Remedies. The Association, or any Owner, shall have the right to enforce this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or attempting to violate any provision of this Declaration or any restrictions contained herein, to restrain violation, to require specific performance and/or to recover damages; and to proceed against any Lot to enforce any lien created by these Restrictions. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot, including the costs of reasonable attorney's fees, in the event any legal action is taken by the Association, and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the Lot, collectible in the same manner as assessment hereunder.

Section 3. Assignability. The Developer, his successors and assigns, shall at all times have the right to fully transfer and assign any or all of his rights and powers under this Declaration, subject to the Developer's obligations hereunder.

Section 4. Nonwaiver. Failure of the Developer or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any Restrictions contained in the Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior to or subsequent thereto.

Section 5. Construction and Interpretation. The Association, to the extent provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, and interpretation and the enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners to the end that the Property shall be preserved and maintained as a viable community.

Section 6. Severability. All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful or

unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, clause or phrase thereof.

Section 7. Nonliability. Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association or the Developer, or their successors or assigns, any liability whatsoever for property damage and/or personal injury occurring to any person or persons whomsoever, or by reason of any use of any Common Areas, or Roads, or adjacent waters, depicted on the Recorded Plot. Any and all persons using any such Roads, Common Areas, easements and water ways, or any of them, shall do so at their own risk and without any liability whatsoever on the part of the Association, the Developer or their respective successors or assigns, as the case may be.

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SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Swann Estates Homeowners Association, Inc., has caused these presents to be signed and sealed by its President and attested by its Secretary on this 27th day of March A.D. 2019, and hereby certifies that attached hereto as Exhibit "A" are copies of written consents from at least two-thirds (2/3rds) of the members of the Association approving amendments to Article II, Section 2; Article IV, Section 3(e); Article V, Section 5; Article VI, Section 6; Article VI, Section 8; Article VI, Section 9; Article VI, Section 11; Article VI, Section 14; Article VI, Section 15; Article VI, Section 20; and Article VI, Section 22.

**SWANN ESTATES HOMEOWNERS
ASSOCIATION, INC.**

By: Michele A Thrift
President

(Corporate Seal)

Attest: Mary J. Stranghan
Secretary

STATE OF Delaware :
COUNTY OF Sussex : ss.

BE IT REMEMBERED, that on this 27th day of March, A.D. 2019, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, Michele A Thrift, President of the Swann Estates Homeowners Association, Inc., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and Deed, and the act and Deed of the said corporation; that the signature of the President is in his/her own proper handwriting; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by the Board and membership of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

LEA JAYE GOEHRINGER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Oct. 26, 2020

Notary Public: [Signature]
Type or Print Name of Notary: _____
Commission Expires: _____