

Declaration of Covenants and Restrictions  
**SWAN POND BOTTOM PRESERVE, LLC**  
A Residential Subdivision

**The Commonwealth of Kentucky**

**County of Russell**

THIS DECLARATION, made on the date hereinafter set forth by SWAN POND BOTTOM PRESERVE a Kentucky LLC, herein after referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Article III of this Declaration and desires to create thereon a residential community with designated "Lots," for the benefit of the present and future owners of said Lots; and

NOW, THEREFORE, the Declarant declares that the real property described in Article III is and shall be held, transferred, sold, conveyed, occupied and enjoyed subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to herein collectively as "covenants and restrictions") herein set forth.

**ARTICLE I**

**Definitions**

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

(a) "The Subdivision" shall mean and refer to Swan Pond Bottom Preserve, and any other real property (including specifically, but without limitation, all or portions of other subdivisions being or to be developed by Declarant or affiliated or subsidiary developed by Declarant or affiliated or subsidiary entities) brought within the scheme of this declaration.

(b) "The Properties" shall mean and refer to the properties described in Article III hereof which are subject to this Declaration.

(c) "Subdivision Plat" shall mean and refer to the respective maps or plats of Swan Pond Bottom Preserve, recorded in the Plat Records of Russell County, Kentucky.

(d) "Lot" and/or "Lots" shall mean and refer to each of the tracts shown upon the Subdivision Plats. References herein to the "the Lots" (each lot) in "The Subdivision" shall mean and refer to Lots as defined respectively in this Declaration and all Supplemental Declarations.

(e) "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plats, except the Lots and the streets shown thereon, together with such property as the Declarant may, at any time or from time to time, acquire by purchase or otherwise, subject however to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title, References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.

(f) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all owners constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which is not a part of the Properties. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation, storage or protection of equipment; fountains; statuary; sidewalks; common driveways; landscaping; swimming pools; tennis courts; boat ramps and other similar and appurtenant improvements. References herein to "the Common Facilities" (any common facility) in "The Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

(g) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of covenants and Restrictions bringing additional property within the scheme of this Declaration under the authority provided in Article III hereof.

(h) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to "the Owners in the Subdivision" shall mean and refer to Owners as defined in this Declaration and all Supplemental Declarations.

## ARTICLE II

**Section 1. Existing Easements.** The Subdivision Plats dedicate for the use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivision Plats further establish dedications, limitations, reservations and restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title have

heretofore granted, created and dedicated certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

**Section 2. Changes and Additions.** Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties, along and on either or both sides of any Lot line, which such easements shall have a maximum width of five (5) feet on each side of such side Lot line.

**Section 3. Title to Easements and Appurtenances not Conveyed.** Title to any Lot conveyed by Declarant, by contract, deed, or other conveyance shall not be held or construed, in any event, to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Properties, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

**Section 4. Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Properties within the public utility easements from time to time existing and from service lines situated within such easement to the point of service on or in the structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Properties until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees, and shrubs located on portions of the Properties abutting such easements. All new utilities (electric, communication, etc.) shall be installed underground with no utility poles or overhead wires.

**Section 5. Emergency and Service Vehicles.** An easement is hereby granted to all fire protection, ambulance and other emergency vehicles, and to garbage and trash collection

vehicles, and to other service vehicles to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Declarant, its agents, employees and management personnel to enter the Properties to render any service.

**Section 6. Electric Service.** The owner of each Lot in the Residential Subdivision shall, at his own cost furnish, install, own, and maintain (all in accordance with the requirements of the local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a location on the lot determined by the utility company and lot owner, particular to the specifics of the site and access to existing utilities. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the owner of each Lot shall, at his/her own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing the service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot.

**Section 7. Surface Area.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any suppliers of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repairs of any facility in any such easement area.

## ARTICLE III

### Property Subject to this Declaration

**Section 1. Description.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration consists of the following:

(a) All of the Swan Pond Bottom Preserve, according to the plat therefore recorded in Plat Cabinet 5, Slide 1733 of the Plat Records of the Russell County, Kentucky, (or any subsequently recorded plat thereof);

All of which real property is sometimes hereinafter referred to as the "Existing Property".

**Section 2. Mineral Exceptions.** There is hereby excepted from the Properties and Declarant will hereinafter except from all its sales and conveyances of the properties, or any part thereof, including the Lots and Common Properties, all oil, gas, and other mineral in, on and under the properties, but Declarant hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas, and other minerals.

**Section 3. Additions to Existing Property.** Additional lands may become subject to the scheme of this Declaration in the following manner.

(a) **Additions by Declarant.** The Declarant, its successors and assigns shall have the right to bring within the scheme of this Declaration additional properties in the future stages of the development (including, without limitation, subsequent sections of Swan Pond Bottom Preserve, and all portions of other subdivisions being or to be developed by Declarant or affiliated or subsidiary entities). Any additions authorized under this and the succeeding subsection, shall be made by filing of record a supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property and the execution thereof by Declarant shall constitute all requisite evidence of the required approval thereof by such Declarant.

## ARTICLE IV

### Construction Requirements

**Section 1. Size of Residence.** No residential structure with heated floor space of less than the applicable minimum number of square feet set forth below, exclusive of the area of attached garages, porches, or other appurtenances or appendages, shall be erected on any Lot as follows:

(a) **Type of Structure.**

- (1) One Story Residence
- (2) Multi-level Residence

(b) **Minimum Heated Floor Space.**

- (1) 1,000 square feet above ground level
- (2) 800 square feet of heated floor space on the main ground level and at least a total of 1,000 square feet

**Section 2. Building Location.** No buildings or structures shall be constructed within fifteen (15) feet of a property line unless prior written permission from the Declarant is obtained to do otherwise.

**Section 3. Construction Material.** All buildings will be constructed on site, no prefabricated buildings, and all construction shall be completed within twelve (12) months after construction begins. Pier type foundations may be used for decks and porches. No open pier type foundations for a dwelling may be used, unless on a Lot where the slope of the Lot would require a support of nine (9) feet or more. Pier foundations of less than nine (9) feet shall be constructed or finished in the same manner as a basement would be constructed. The exterior materials of the residential building shall consist primarily of natural materials (masonry, stone,

wood, etc.). "Hardie Board" siding is allowed, but no aluminum, sheet metal, or vinyl siding will be permitted.

## ARTICLE V

### Building Use and Restrictions

**Section 1. Single Family Residential Use.** Each lot (including land and improvements) shall be used and occupied for single family residential purposes only. No owner or occupant shall use or occupy his lot or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single-family residence for the Owner or his tenant and their families. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments, or other apartment use. No Lot shall be used or occupied for any business, Commercial, trade, or profession purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. Short term rental of the private residence is permitted but No rental of the property for outside camping/RVing is permitted.

**Section 2. Temporary and Other Structures.** Maximum of 1 accessory structure is permitted if constructed on a permanent slab or foundation (free standing garage/barn/storage building). Any accessory structure will be constructed no closer than 50 feet nor farther than 150 feet from the roadway and sited such as to not obstruct the view of the other residences in the subdivision. Accessory structures shall be no larger than 1000 square feet of enclosed area with a maximum eave height of 12 feet, and roof peak of 17 feet. No structure of a temporary character, trailer, mobile, RV/campers, modular or prefabricated home, tent, shack, barn, or other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently.

**Section 3. Nuisance.** No noxious or offensive activity shall be carried on or permitted upon any Lot or the Common Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Declarant shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than three-quarters of a ton, motor vehicles not currently licensed, boats, trailers or other vehicles shall be permitted to be parked on any Lot, except in a closed garage. No vehicles shall be parked on any street. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done on any street, driveway or other portion of the common Properties. The use or discharge of firearms, firecrackers, or other fireworks in the Properties is prohibited. No ATVs, motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated in the Properties. If in the sole judgment of the Declarant, such operation, by reason of noise, property damage, fumes emitted, or by reason of manner of use, shall constitute a nuisance. The cost of excessive damage/repairs to the roadway or Common Properties associated with the nuisance will be borne by the Lot owner associated with the nuisance.

**Section 4. Signs.** Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section are expressly transferred, shall own any portion of the Properties, no sign of any kind shall be displayed to the public view on any Lot or the Common Properties except:

(a) Builders may display one (1) sign of not more than five (5) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and

(b) Any Owner may display one (1) sign of not more than five (5) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent.

Declarant or its agent shall have the right to remove any sign not complying with the provisions of this Section, and in so doing, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

**Section 5. Animals.** No cattle, swine, sheep, goats, or livestock other than horses (maximum of 1 horse per 4 acres) may be kept on the property. Common household pets (not to exceed 2 adult animals) and poultry (for personal use only and properly contained to the lot) may be kept but they shall not be bred or kept for commercial purposes.

**Section 6. Removal of Dirt.** The digging of dirt or the removal of any dirt from any Lot or from any portion of the Common Properties is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

**Section 7. Garage and Refuse Storage and Disposal.** All Lots and the Common Properties shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Properties shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic, or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

**Section 8. Septic Tanks.** All septic tanks shall be construed in a manner approved by local and state regulations.

**Section 9. Access.** No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Declarant first shall have been obtained.

**Section 10. Driveways and Culverts.** Each Lot must be accessible to an adjoining street by a driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used. No Owner may block any drainage ditch, (including road ditches). The specifications for and construction of all drain tiles or culverts in any drainage ditch, whether to be installed in connection with a driveway or otherwise, must be approved by the Declarant.

**Section 11. Maintenance of Access Road.** Maintenance of the access roadway in a safe and passable condition (from the entry gate to the terminus of the roadway easement) will be the responsibility of the lot owners to be shared equally among lot owners. If mutually agreed, maintenance may be contracted to a third party with the cost shared equally by the lot owners. No owner may block the roadway or restrict access in any way whatsoever.

**Section 12. Utilities.** Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line.

**Section 13. Minimum Lot Areas.** No lot shall be re-subdivided unless previously approved in writing by the Declarant.

**Section 14. Oil and Mining Operations.** No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 15. Lot Maintenance.** All Lots shall be mowed at least twice yearly, first time between June 1 and July 31, and the second time between August 1 and September 30. If the Lots are not mowed as provided above, the Declarant will mow the Lots and the land Owners will be billed. Failure of the land Owner to pay the bill shall constitute a lien against the property. After a residence is constructed on a Lot the lawn must be maintained and cut on a regular basis and in a reasonable manner.

**Section 16. Fences.** No fences are permitted without the prior written consent of the Declarant.

**Section 17. Gates.** Gates shall remain closed and locked and Gate Codes maintained in a secure manner.

## ARTICLE VI

### General Provisions

**Section 1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2053. During such initial term the covenants and

restrictions of this Declaration may be changed or terminated only by any instrument signed by the then Owners of fifty-one (51%) percent of the Lots in the Subdivision and properly recorded in the appropriate records of Russell County, Kentucky. Upon the expiration of such initial term, said covenants and restrictions (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) years extension periods, the covenants and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one (51%) percent of all the Lots in the Subdivision and properly recorded in the appropriate records of Russell County, Kentucky.

**Section 2. Enforcement.** Any Owner at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessment, and all other provisions set out in this Declaration. Failure of any owner to take action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

**Section 3. Amendments by Declarant.** The Declarant shall have and reserves the right at any time and from time to time, without the consent of any other party to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

**Section 4. Interpretation.** If this Declaration or any word, clause, sentence paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

**Section 5. Omissions.** If any punctuation, word, clause, sentence or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

**Section 6. Notices.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Owner, on the records of at the time of such mailing.

**Section 7. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals shall in all cases be assumed as though in each case fully expressed.

**Section 8. Severability.** Invalidation of any one or more of the Covenants, Restrictions, conditions, or provision contained in this Declaration, or any part thereof, shall in no manner affect any of the other Covenants, Restriction, conditions, or provisions hereof, which shall remain in fully force and effect.

**IN WITNESS WHEREOF**, the undersigned being the Declarant, herein, and the current lot owner, herein, have executed this Declaration to be effective, this 13<sup>th</sup> day of July, 2023.

**SWAN POND BOTTOM PRESEVE, LLC**

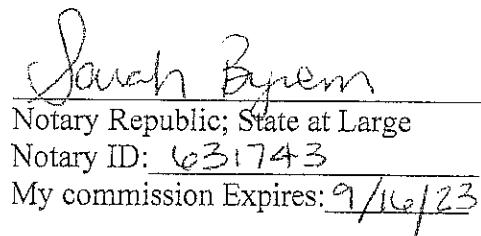


Susan R. Slade  
DECLARANT

COMMONWEALTH OF KENTUCKY  
COUNTY OF RUSSELL

Before me, on this day personally appeared SUSAN SLADE, of Swan Pond Bottom Preserve, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledges to me that they executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

Given under my hand and seal of office, this the 13<sup>th</sup> day of July, 2023.



Sarah Byrom  
Notary Republic; State at Large  
Notary ID: 631743  
My commission Expires: 9/16/23

THE UNDERSIGNED ATTORNEY HAS PREPARED THIS INSTRUMENT.



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Attorney at Law  
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