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AMENDMENT
TO
RIGHT-OF-WAY, EASEMENT AND SHARED ROAD MAINTENANCE
AGREEMENT

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Act # 0591
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12:50 PM

THIS AMENDMENT TO RIGHT-OF-WAY, EASEMENT AND SHARED ROAD MAINTENANCE AGREEMENT ("Agreement"), made this 2nd day of December, 2005 by and among SCOTT M. FASSBACH ("Fassbach") and WHITE SWAN, LLC, a Limited Liability Company under the laws of Maryland ("White Swan").

RECITALS

A. Fassbach is the owner of all that lot or parcel of ground situate, lying and being in the Second Election District of Talbot County, Maryland and being shown and described as Deed Parcel 2, Tax Map Parcel 1 (the "**Fassbach Parcel**") on a plat entitled "A Revised Plat of Asbury in Three Parcels" prepared by Lane Engineering, Inc., dated May 30, 2003 and recorded among the Plat Records for Talbot County in Plat Cabinet 81, folio 349 (the "**2003 Plat**").

B. Fassbach acquired the Fassbach Parcel from Sally Engelhard Pingree and Edward G. Beimfohr, Trustees under a Trust Agreement dated June 1, 1992 fbo Sally Engelhard Pingree (collectively "**Pingree**") under a Deed dated May 28, 2005 and recorded among the Land Records of Talbot County Maryland in Liber 1305, folio 191.

C. White Swan is the owner of all that lot or parcel of ground situate, lying and being in the Second Election District of Talbot County, Maryland designated as Deed Parcel 1, Tax Map Parcel 2 (the "**White Swan Parcel**") as the same is more particularly shown and described on the 2003 Plat.

D. White Swan and Pingree entered into a certain Right-of-Way, Easement and Shared Road Maintenance Agreement dated January 14, 2005 and recorded among the Land Records of Talbot County, Maryland in Liber 1304, folio 797 pertaining to a 50' wide right-of-way more particularly described therein (the "**Right-of-Way**") which serves both the Fassbach Parcel and the White Swan Parcel.

E. White Swan has submitted an application to Talbot County, Maryland, to subdivide the White Swan Parcel into two (2) lots being more particularly shown as "LOT 1" and "LOT 2" on a plat titled "FINAL SUBDIVISION PLAT ON THE LANDS OF WHITE SWAN, LLC IN THE SECOND ELECTION DISTRICT TALBOT COUNTY, MARYLAND TAX MAP 46 GRID 1 PARCEL 2," prepared by Lane Engineering, Inc., dated January 5, 2005, and intended to be recorded among the Plat Records of Talbot County, Maryland (the "**White Swan Final Subdivision Plat**").

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LIBER 1405 FOLIO 399

F. Upon the recording of the White Swan Final Subdivision Plat, White Swan intends to convey Lot 1 and Lot 2 to its members.

G. As a condition of approval of the White Swan Final Subdivision Plat, the Talbot County Planning Commission has required the designation of a portion of the Right-of-Way as a "Private Road" under the subdivision regulations of Talbot County, Maryland.

H. In connection with the designation of a portion of the Right-of-Way as a Private Road, Fassbach and White Swan have agreed to revise the Right-of-Way (the "**Revised Right-of-Way**"), which Revised Right-of-Way is more particularly shown on the White Swan Final Subdivision Plat and on a plat titled "RIGHT OF WAY EXHIBIT REVISED 50' WIDE RIGHT-OF-WAY FOR WHITE SWAN, LLC IN THE SECOND ELECTION DISTRICT TALBOT COUNTY, MARYLAND TAX MAP 46 GRID 1 PARCEL 2," prepared by Lane Engineering, Inc., and dated October 24, 2005 (the "**Right-of-Way Exhibit**"), a copy of which is attached hereto as **Exhibit A**.

I. The Revised Right-of-Way extends approximately 659.76 feet along its southerly boundary from Deep Neck Road into the Fassbach Parcel and is improved by a gravel road located within the Revised Right-of-Way (the "**Road**").

J. Fassbach and White Swan wish to formalize their agreement regarding their respective rights and obligations with respect to the Revised Right-of-Way and the Road.

WITNESSETH

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual entry into this Agreement by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Fassbach and White Swan hereby agree as follows:

SECTION 1. GRANT OF RIGHT-OF-WAY.

1.1. Release of a Portion of the Right-of-Way by White Swan. White Swan hereby releases, cancels and extinguishes any easement or right-of-way that it might have to use any portion of the Right-of-Way as described in the aforesaid Right-Of-Way, Easement and Shared Road Maintenance Agreement dated January 14, 2005 other than such portion thereof which constitutes the Revised Right-of-Way shown and depicted on the Right-of-Way Exhibit attached hereto as Exhibit A.

1.2. Grant of Right-of-Way to White Swan, its Successors and Assigns. Fassbach hereby grants to White Swan an irrevocable, perpetual and non-exclusive easement and right-of-way in and over the Revised Right-of-Way as more particularly shown and described on the Right-of-Way Exhibit attached hereto as Exhibit A for the construction, installation, maintenance, repair, replacement and use of the Road for

vehicular and pedestrian ingress and egress to and from the two (2) lots shown and depicted on the White Swan Final Subdivision Plat to the public road known as Deep Neck Road and for the extension of utilities to the two (2) lots shown thereon.

1.3. Easement Binding Upon Title. The benefits and burdens of the easement and right-of-way hereinabove granted under Section 1.2. shall run with and bind upon the titles to the Fassbach Parcel and the White Swan Parcel, including the two (2) lots shown on the White Swan Final Subdivision Plat and any other subdivided portion thereof, and upon each person from time to time hereafter holding title of record thereto, their respective heirs, personal representatives, successors and assigns.

SECTION 2. USE OF RIGHT-OF-WAY.

2.1. Duty and Cost of Normal Maintenance of the Revised Right-of-Way. Subject to the terms of Section 2.2., Fassbach and White Swan shall share equally in the expense of performing all necessary and ordinary maintenance and repairs to the Revised Right-of-Way and the Road caused by the normal wear and tear by Fassbach and White Swan, including the cost of (a) any repairs or replacement materials required to fill in any and all objectionable holes, ruts, bumps, subsidences and other defects which materially interfere with the safe and convenient passage of vehicular and pedestrian traffic over the Revised Right-of-Way and the Road, and (b) any removal of debris, trash and accumulation of materials required in connection with the maintenance, repair or replacement of the Revised Right-of-Way and the Road. The term "maintenance" as used in this Agreement relative to the Revised Right-of-Way and the Road shall not include a realignment or widening of the Road in excess of its existing width or the installation of a road surface utilizing different materials or methods of construction which will have the effect of (i) creating a new type of road surface or (ii) increasing the usual periodic cost of maintaining the Revised Right-of-Way or the Road. Fassbach and White Swan shall mutually agree upon the aforesaid maintenance and repair of the Revised Right-of-Way and the Road and shall pay their proportionate share of any expenditures in connection therewith within thirty (30) days after the date of the completion of such maintenance and repair.

2.2. Extraordinary Repair and Maintenance. Fassbach and White Swan agree that the cost to repair any and all damage to the Revised Right-of-Way and the Road caused by either of them in connection with the construction, maintenance, repair or replacement of improvements to either the Fassbach Parcel or to the White Swan Parcel or any subdivided portion thereof, shall be borne solely by the owner of the parcel or lot on which such work is performed.

2.3. Access to White Swan Parcel. White Swan agrees that the present and future owners of any subdivided portions of the White Swan Parcel shall not have the right to connect any additional residential driveways to the Road located within the Revised Right-of-Way to provide access to the White Swan Parcel or any subdivided portion thereof, it being understood and agreed that the Private Road located within the

Revised Right-of-Way shall be the sole means of access from the Revised Right of Way to and from the White Swan Parcel or any subdivided portion thereof.

2.4. Extension of Utilities to the White Swan Parcel. Fassbach and White Swan agree that the present and future owners of the White Swan Parcel shall have the right, at their sole expense, to extend underground utility lines within, along, through, or across the Revised Right-of-Way to provide utility service to the White Swan Parcel and any subdivided portion thereof so long as any damage caused thereby to the Revised Right-of-Way is repaired at the sole expense of the owner of the parcel on which the work has been performed.

2.5. Name of Private Road. The parties agree that the Private Road located within the Revised Right-of-Way shall be named "Deep Neck Farm Lane."

SECTION 3. NOTICES.

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) in writing, and (b) deemed to have been provided (i) (1) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth below or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) upon being given by hand or other actual delivery to such party. Such notice shall be given to the parties at the following addresses:

Fassbach:	Scott M. Fassbach The Advisory Board Company 2445 M Street, N.W. Washington, DC 20037
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White Swan;	Zvi Barzilay, Manager 1900 Deer Run Meadowbrook, PA 19046
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SECTION 4. GENERAL.

4.1. Binding Effect. This Agreement shall be binding on the parties hereto, their respective heirs, personal representatives, successors and assigns, and shall run with and be binding upon each of the Fassbach Parcel and the White Swan Parcel, and any subdivided portion thereof.

4.2. **Recordation.** This Agreement and the Exhibits attached hereto shall be recorded among the Land Records of Talbot County, Maryland.

4.3. **Modification.** The provisions of this Agreement may only be modified or terminated by a written agreement which is signed by all of the owners of the Fassbach Parcel and the White Swan Parcel, and any subdivided portion thereof that may utilize the Revised Right-of-Way for ingress and egress to and from Deep Neck Road, which agreement shall be recorded among the Land Records of Talbot County, Maryland.

4.4. **After-Acquired Interest.** Every person or other entity who hereafter acquires any right, title or interest in the Fassbach Parcel or the White Swan Parcel, or any subdivided portion thereof, is and shall be conclusively deemed to benefit from this Agreement and to have consented and agreed to every restriction, obligation and covenant contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquires the Fassbach Parcel or the White Swan Parcel, or any subdivided portion thereof.

4.5. **Effectiveness.** This Agreement shall become effective on and only on its execution and delivery by each party hereto.

4.6. **Complete Understanding.** This Agreement represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same.

4.7. **Applicable Law.** This Agreement shall be given effect and construed by application of the laws of Maryland, and any action or proceeding arising hereunder shall be brought in the courts of Maryland.

4.8. **Headings.** The headings of the sections and subsections hereof are provided herein for convenience of reference, and shall not be considered in construing their contents.

4.9. **Construction.** As used herein, (a) the term "person" means a natural person, a trustee, a corporation, a partnership and any other form of legal entity; (b) all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

4.10. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

4.11. **Right-of-Way to be Private.** Neither the declaration and grant of any easement, nor the use and enjoyment pursuant to the provisions of this Agreement, shall

be deemed in any way to create or confer in or on any member of the public any right to use or enjoy the same, or any estate therein.

IN WITNESS WHEREOF, each party hereto has executed and ensealed this Agreement or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS:

Richard K. White

Scott M. Fassbach (SEAL)
Scott M. Fassbach

White Swan, LLC, a
Maryland Limited Liability Company

EXECUTED IN

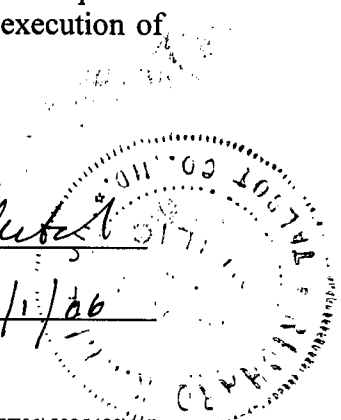
By: *COUNTERPARTS* (SEAL)
Zvi Barzilay, Manager

STATE OF Maryland)
) ss.:
COUNTY/CITY OF Talbot)

I HEREBY CERTIFY that on this 14th day of December, 2000, before me, the subscriber, a Notary Public of the aforesaid jurisdiction, personally appeared **Scott M. Fassbach**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the execution of the within instrument to be his act and deed.

AS WITNESS my hand and Notarial Seal.

Richard K. White
Notary Public
My Commission Expires: 5/1/06



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STATE OF Maryland
COUNTY/CITY OF Talbot

) ss.:
)

I HEREBY CERTIFY that on this 2nd day of December, 2005, before me, the subscriber, a Notary Public of the aforesaid jurisdiction, personally appeared **Zvi Barzilay**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged that he is the Manager of **White Swan, LLC** and as such has the authority to execute the within instrument and acknowledged the same to be the act and deed of **White Swan, LLC**.

WITNESS my hand and Notarial Seal.

John C. Amstead

Notary Public

My Commission Expires: 7-1-06

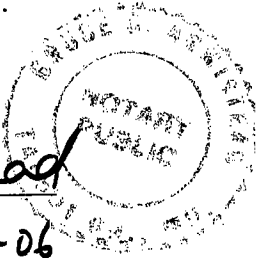
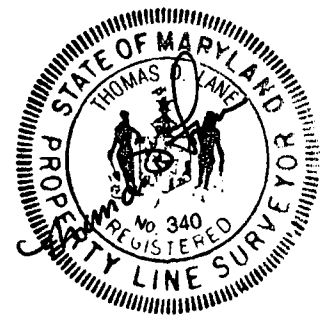
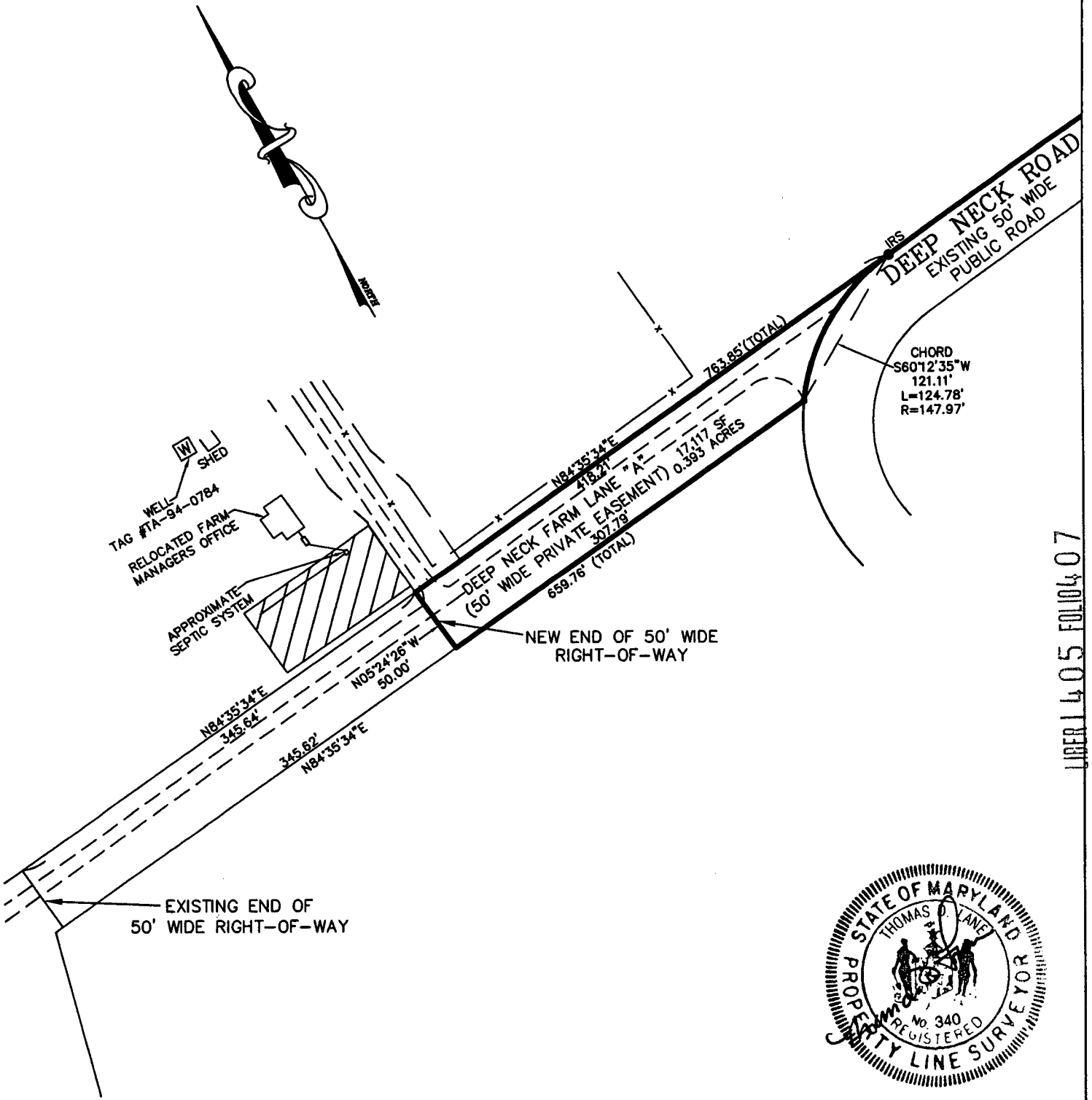



EXHIBIT "A"



LIBER 1405 FOLIO 407

TALBOT COUNTY CIRCUIT COURT (Land Records) MAS 1405, p. 0407, MSA_CE91_1342. Date available 12/28/2005. Printed 05/23/2017.

FILE NO. 4115	SHEET NO. 1 OF 1	RIGHT OF WAY EXHIBIT		DATE 10/24/05	
		REVISED 50' WIDE RIGHT-OF-WAY FOR WHITE SWAN, LLC IN THE SECOND ELECTION DISTRICT TALBOT COUNTY, MARYLAND		SCALE 1"=100'	
TAX MAP 46		GRID 1	PARCEL 2	DRAWN BY JTD	Lane Engineering, Inc. Civil Engineers - Land Planning - Land Surveyors  E-mail: mail@leinc.com 117 Bay St. Easton, MD 21601 (410) 822-8003 FAX (410) 822-2024 15 Washington St. Cambridge, MD 21613 (410) 221-0818 FAX (410) 478-9942 1148 West Water St. Centreville, MD 21617 (410) 758-2095 FAX (410) 758-4422
				DWC. NAME 040832NEWRW	
				APPROVED TDL	