

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

JOHN F. ATKINSON and OLEITA N. ATKINSON, and SWANN KEYS CIVIC ASSOCIATION, a corporation of the State of Delaware,	:	Civil Action No. 852, 1980
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	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BET, INC., a corporation of the State of Delaware,	:	
	:	
Defendant.	:	

ORDER AND FINAL JUDGMENT

A hearing having been held before this Court on December 17, 1985, pursuant to this Court's Order of October 31, 1985, upon a Compromise and Settlement Agreement dated September 10, 1985, of the above-styled action (the "Action"); it appearing that due notice and publication of said hearing was given in accordance with the aforesaid Order; the Court having determined that notice to the members of the class, the present and past landowners of Swann Keys, was adequate and sufficient; the respective parties having appeared by their attorneys of record; the Court having heard and considered matters in support of the proposed settlement and compromise of the Action; the attorneys for the respective parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Court's October 31, 1985 Order, together with form of notices provided

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for therein; and the entire matter of the proposed settlement having

been heard and considered by the Court:

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. On November 14 and 15, 1985, the notice of pendency of Action, settlement, settlement hearing and right to appear (the "Notice") was mailed by certified mail, return receipt requested, to all present and past landowners of Swann Keys at the time of certification of this Action as a class action suit. 804 letters were sent to the last known addresses as determined by Sussex County tax and land assessment records and maintenance assessment address lists provided by defendant. Further, notice by publication was accomplished once a week for the three consecutive weeks of November 25, 1985, December 2, 1985 and December 9, 1985, before the December 17, 1985 hearing in the Sussex Countian, a newspaper of general circulation in the County where said real estate is located. Said Notice is hereby determined to be the best possible notice under the circumstances and in full compliance with Rule 23 of the Rules of the Court of Chancery, as well as paragraphs 2 and 4 of the October 31, 1985 order.

2. The Court also notes the filing of a LIS PENDENS DECLARATION on November 26, 1985, advising possible transferees of Swann Keys lot owners of the December 17, 1985 class action hearing, in Book 917, page 188, as well as a LIS PENDENS DECLARATION filed on April 8, 1983, about this class action suit and its effect on the transfer of property and amenities of defendant, BET, Inc., to Swann Keys Civic Association or other association of landowners, as determined by this Court, of record

Georgetown, Delaware.

3. Due and adequate notice of the proceedings having been given to the present and past landowners of Swann Keys and a full opportunity having been offered to these landowners to participate in this hearing, it is hereby determined that plaintiffs, class representatives, all present and past landowners of Swann Keys, located between Fenwick Island and Selbyville, Baltimore Hundred, Sussex County, Delaware, said real estate being further described in a survey of Swann Keys prepared by C. Kenneth Carter and Associates, dated March, 1978, recorded in Plot Book 14, pages 99-100 in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, and all other landowners, past, present or future, of Swann Keys and defendant, BET,. Inc., their respective heirs, executors, administrators, successors or assigns, are bound by the Order and Final Judgment herein.

4. The Compromise and Settlement Agreement dated September 10, 1985, and filed in this Court, is hereby approved and confirmed as being fair, adequate and reasonable, and the Register in Chancery is directed to enter and docket this Order and Final Judgment in the Action.

Settlement shall occur on or before March 14, 1986, at which time BET shall be paid the sum of \$300,090, less its share of the expenses of mailing, printing and publication of the 1983 class certification and 1985 class settlement hearing notices sent pursuant to the Compromise and Settlement Agreement and October 31, 1985 Order of this Court, and the usual settlement expenses borne by seller. BET and the Swann Keys Civic Association shall operate the park jointly from the

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date of settlement until March 31 1986, at which time the operation shall be turned over in its entirety to the Swann Keys Civic Associa-

tion. All responsibility for collection of the 1986-87 assessments shall be that of the Association and all 1986-87 assessments collected shall be held in a separate escrow account by the Association pending settlement.

5. Each landowner of Swann Keys is responsible for, and each lot in Swann Keys shall be charged with the responsibility to pay for the purchase of property from defendant, BET, Inc. to Swann Keys Civic Association by way of special assessment(s) as determined by Swann Keys Civic Association in the manner described in paragraph 6 of this Order. However, the following landowners, their successors or assigns, are not subject to this judgment but may have responsibility on some other legal or equitable basis independently of this action:

A. A conveyance from James E. Swann, Jr., et ux., to Clifford T. Karwacki, et ux., dated March 30, 1967 for Lots 18 and 19 of Block A, of record in Deed Book 624, page 1031;

B. A conveyance from James E. Swann, Jr. et ux., to Domenick A. Peronti, et ux., dated May 9, 1967, for Lots 33 and 34 in Block A, of record in Deed Book 619, page 494. The successors in interest to Lot 33 are Henry C. Sauer, Jr. and his wife, Catherine E. Sauer, of 8208 Beach Drive, Baltimore, Maryland 21222, and their deed is recorded in Book 1285, page 96. The successors in interest to Lot 34 are Robert C. Suess and Faye Suess, his wife, of 9623 Alda Drive, Baltimore, Maryland 21234, and their deed is recorded in Book 1165, page 160:

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C. A conveyance from James E. Swann, Jr., et ux., to Kathryn W. Robertson and Bruce T. Trayers, dated July 26, 1967, for Lot 38,

Block A, of record in Deed Book 624, page 393. The successor in interest to Lot 38 are Roland Jester and Mary Jester, his wife, of 1500 Willis Place, Wilmington, Delaware 19805. There deed is recorded in Book 667, page 30; and

D. A conveyance from James E. Swann, Jr., et ux., to George J. Riddle, et ux., dated September 30, 1967, for Lot 10, Block A, of record in Deed Book 625, page 80. The successor in interest is Steve Yuhasz, Jr., c/o James Blue, of 19631 Crystal Rock Drive, Germantown, Maryland 20874. His deed is recorded in Deed Book 670, page 935.

However, the following landowners, their successors or assigns, are subject to this judgment by virtue of their voluntary acceptance of it by postcards mailed to the Court and filed with the Register in Chancery as authorized by the October 31, 1985 Order of this Court and Exhibit 2 and the form of postcard attached thereto:

A. A conveyance from James E. Swann, Jr., et ux., to George T. Travers, dated July 26, 1967, for Lot 37, Block A, of record in Deed Book 624, page 396. The successors in interest are Gene W. Hansen and Gretchen C. Hansen, his wife, and Arthur H. Cleveland of 4002 Quintana Street, Hyattsville, Maryland 20782, and their deeds are recorded in Book 682, page 884, Book 889, page 202, Book 889, page 204;

B. A conveyance from James E. Swann, Jr., et ux., to Henry Barone, Jr., et ux., of 1916 West Second Street, Wilmington, Delaware 19805, dated August 16, 1967, for Lot 32, Block A, of record in Deed Book 623, page 757; and

C. A conveyance from James E. Swann, Jr. , et ux., James M. Johnson, et ux., dated October 9, 1967, for Lots 4 and 5 in Block A, of record in Deed Book 624, page 1028. The successors in interest to Lot 4 are Horace R. Hawkins, Jr. and his wife, Jeanne M. Hawkins, of 202 Twin Chimneys Drive, Wirty, Virginia 24184. Their deed is recorded in Book 1145, page 64. The successors in interest to Lot 5 are Richard Goldsborough and his wife, Beulah O. Goldsborough, of 2735 Frenchtown Road, Newark, Delaware 19702. Their deed is recorded in Book 865, page 67.

6. Each present landowner of Swann Keys, his successors or assigns, except those excluded above, shall become a member of the Swann Keys Civic Association, a nonprofit and nonstock corporation of the homeowners. Each property owner will have one vote for each lot owned. An owner is defined as the record fee simple title holder by deed to any such lot. Where 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 vote be cast with respect to any lot.

Each property owner has the right to vote for the board of directors of Swann Keys Civic Association which shall consist of 15 members. The board of directors shall elect the officers which consist of the positions of President, Vice President, Treasurer, Recording Secretary and Corresponding Secretary. The directors and officers shall have the powers as set forth in the certificate of incorporation and by-laws of the Swann Keys Civic Association and such other powers as may be exercised under Delaware law, including the power to borrow whatever

money is necessary to complete this settlement upon such terms and

conditions as decided by the present board of directors of Swann Keys Civic Association, or to borrow money for the common good and welfare of the park or as necessary to operate it to this end. The present board of directors and officers of Swann Keys Civic Association shall continue in office until a meeting of lot owners on the 3rd day of May, 1986, when new officers and directors shall be selected. The terms of this Order shall supersede any inconsistent provisions of the certificate of incorporation or by-laws, if there be any, and the members of the Association as members of the class are deemed to have given their consent to change the certificate of incorporation and by-laws to conform to this Order and to remove any inconsistencies.

For the fiscal year of April 1, 1986 through March 31 1987, each property owner shall pay a maintenance assessment in the amount of \$429 per lot to the Swann Keys Civic Association, which shall operate the utilities and maintain the streets and Park and common areas of the development. The maintenance assessment shall be due and payable on May 1, 1986, together with interest at the legal rate after date of May 1, 1986 and any delinquent lot owner shall be responsible for reasonable attorneys' fees and costs in any collection suit. The maintenance assessment for succeeding years shall be established upon vote of the majority of the lot owners as is hereafter provided. The common areas of the development shall be all the property subject to purchase from BET, Inc., except for Parcel "A", and all common property may be mortgaged or pledged as security, if requested by a lender, for financing or by other primary or secondary parties who are willing to loan

money for the transaction. However, if requested to provide security for financing, Parcel "A", and the mobile home office and equipment and land upon which the mobile home office and equipment is located may be mortgaged or pledged as security. In the event of default and foreclosure at execution sale, Parcel "A", the mobile home office and equipment and land upon which the mobile home office and equipment is located shall be sold at execution sale or sale in lieu of execution as privately owned property without claim of common rights or use of the Swann Keys lot owners to the same. In such event, the land for the mobile home office shall be an area equivalent to the minimum requirements for a single family residential use as determined by applicable zoning or deed restrictions. Without limitation, Parcel "A" could be subdivided into additional lots for single family residential use by the purchaser at execution sale or by the grantee of a deed in lieu of execution sale, to inure to the benefit of their respective heirs, executors, successors or assigns and the Swann Keys lot owners would, through this judgment, be deemed to have consented to any rezoning request to achieve this result. If necessary, additional access to the lots in Parcel "A" would be given to permit the development of the residential lots by way of a four foot wide parkway as shown on a plot of Swann Keys by C. Kenneth Carter and Associates in Plot Book 14, pages 99-100 in the Office of the Recorder of Deeds at Georgetown, Delaware, or such additional land as may be required by zoning authorities for the development of Parcel "A" into three single family residential lots. If these events occur, the new owners of the three lots in Parcel "A" and the mobile home and land shall be members of the Swann Keys Civic Association and shall be

subject to all applicable rules and regulations, including obligations

to pay for maintenance and other assessment fees on a prorata basis from date of possession, but not those for the BET, Inc. purchase. Following satisfaction of any debts to fund the settlement Parcel "A" shall be dedicated to the common benefit and use of the Swann Keys property owners.

On May 3, 1986, and no later than the third Saturday in May of each succeeding year, the owners shall meet at such location and time of day as selected by the present board of directors of Swann Keys Civic Association to elect the directors by majority vote. The directors in turn will select the officers. The directors and officers shall serve for a one year term until their successors are chosen and may be re-elected without restriction.

The Board of Directors and meetings of the lot owners may be held at such other time(s) and place(s) as permitted under Delaware law. The Board of Directors may recommend reasonable rules and regulations for the operation of Swann Keys subject to approval by a majority of the lot owners. Upon approval by a majority of the lot owners, the rules and regulations shall bind and be enforceable upon all the lot owners of Swann Keys, their heirs, executors, successors and assigns.

In addition to the previously mentioned initial maintenance fee and special assessment(s) for the BET purchase referenced herein, each owner of a lot shall pay the Swann Keys Civic Association annual assessments or charges and special assessments for capital improvements and operating, repair and replacement reserve funds. The annual and special assessments, together with interest, costs and reasonable

attorneys' fees, shall be a charge on the land of each lot owner and

shall be a continuing lien upon the property against which such assessment is made, provided, however, that it shall be subordinate to mortgage liens of record against said property. The sale or transfer of any lot shall not affect the assessment lien except by foreclosure of a first mortgage lien.

Each such assessment; together with interest, costs and reasonable attorneys' fees for the collection thereof, shall also be the personal obligation of the person who is the owner of such property at the time when the assessment fell due.

Without limitation, the Association shall, through its Board of Directors, propose a budget for approval by a majority of the lot owners for the maintenance, repair and operation of Swann Keys for April 1, 1987 and succeeding assessment years in perpetuity. The lot owners shall meet at such time and places as selected by the board, but in no event later than the third Saturday in May in any such year after calendar year 1986. All lot owners shall receive reasonable notice of any meeting of the lot owners. The budget shall be adopted by a majority of the lot owners in attendance at such meeting. Lot owners may vote by proxy. The budget shall have an effective date of April 1 in any such year. Upon approval by the board of directors, a different month may be selected for future fiscal year purposes.

Without limitation, each lot owner shall pay his prorata share of the settlement with BET, Inc., estimated to be \$340,000 through a special assessment. The prorata share shall be determined by dividing the number of lots in Swann Keys subject to this judgment by the

settlement expense. The special assessment shall be on each lot owned by an individual. The range of the special assessment is between

\$600-\$650, the exact amount of which shall be determined by the Association on the basis of the final settlement expense. When determined by the Association, the special assessment shall be payable in full on May 1, 1986 with interest accruing at the legal rate thereafter and any delinquent lot owner shall be responsible for reasonable attorneys' fees and costs in any collection suit. The Association, through its board of directors, may make additional special assessments to defray the carrying costs and loan payments and expenses which may be incurred to pay for the purchase in such amount(s) and date(s) to satisfy debt payments incurred.

In addition to the annual assessments authorized above for the purchase, the Association may, upon approval of a majority of the lot owners, 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 deferring in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the streets or common property for which a reserve fund does not exist or is not adequate.

The maintenance and special assessment(s) for the purchase are due and payable on May 1, 1986. All other assessments, whether special or otherwise, shall be paid within 30 days from when it is fixed or levied. If payment is not made, then such assessment shall be deemed delinquent and shall, together with interest at the legal rate and reasonable attorneys' fees, continue as a lien on the lot and structure

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which shall bind such lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. If any

assessments are delinquent, the Association may bring legal action against the owner or may foreclose against the lot or may enforce the same through this Court. In the event judgment is obtained, such judgment shall include interest at the legal rate authorized by 6 Del. C. § 2301, as amended, reasonable attorneys' fees and court costs.

7. All other claims and contentions of the parties are hereby waived and compromised and the rights and responsibilities of the parties are determined under this Order and the terms of the Compromise and Settlement Agreement dated September 10, 1985.

8. Pursuant to their application for an award of attorneys' fees and expenses and subject to the terms of the Compromise and Settlement Agreement of September 10, 1985, the plaintiffs' attorneys are hereby allowed the sum of \$34,000 for fees through date of settlement, \$2,500 for accounting fees, and \$2,772.57 for expenses advanced by counsel for the class. Further, the class shall pay the out-of-pocket expenses of counsel through time of transfer of property from defendant, BET, Inc., one-half of the publishing, printing and mailing expenses of the 1983 and 1985 class action certification and settlement hearings, the other one-half being the responsibility of defendant, BET, Inc., and such other usual and customary settlement expenses for similar real estate transactions, such as, but not limited to division of the real estate transfer tax, proration of taxes, owners and mortgagee title insurance, payments for items required by any lender to fund the settlement, and the like. The said sums allowed hereby shall be paid at date of

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settlement, which shall be on or before March 14, 1986, except for the publishing, printing and mailing expenses, which may be paid beforehand.

9. Jurisdiction is hereby retained by this Court for the purposes

of enforcing, protecting and implementing the terms of this Order, and the terms of the Compromise and Settlement Agreement dated September 10, 1985, including the resolution of any disputes that may arise with respect to the effectuation of any of the provisions of the Order and Compromise and Settlement Agreement dated September 10, 1985, and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and Compromise Agreement of September 10, 1985, and this Order.

10. A certified copy of this Order shall be filed with the Recorder of Deeds, in and for Sussex County, Delaware, at Georgetown.

Maurice A. Hartnett, III
Vice Chancellor

DATED: December 23, 1985 *[Date typed in – originally it was handwritten]*

CONSENTED AND APPROVED AS TO CONTENT AND FORM:

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