



Recorded in Boone County, Missouri

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Instrument #: 2013030521 Book: 4254 Page: 11

Grantor: TOMPKINS HOMES & DEVELOPMENT INC

Grantee: TOMPKINS HOMES & DEVELOPMENT INC

Instrument Type: RSTR

Recording Fee: \$45.00 S

No. of Pages: 8

  
Bettie Johnson, Recorder of Deeds



TITLE OF DOCUMENT: Restrictive Covenants for Whitworth Hills South

DATE OF DOCUMENT: December 12, 2013

GRANTOR/GRANTEE: Tompkins Homes and Development, Inc., a Missouri corporation

Legal Description:

WHEREAS, TOMPKINS owns the following described real estate situated in Boone County, Missouri, to-wit:

Lot 3 of the Whitworth Hills Plat No. 2 as shown on the Final Plat recorded in Plat Book 47 at Page 69 of the records of Boone County, Missouri.

Tract 14 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 10 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 9 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 4-A as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 5 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

*Reference Book 4254 Page 10*

Tract 3-A as shown on the Survey recorded in Book 4221 at Page 55 of the Records of Boone County, Missouri.

**RESTRICTIVE COVENANTS**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, TOMPKINS owns the following described real estate situated in Boone County, Missouri, to-wit:

Lot 3 of the Whitworth Hills Plat No. 2 as shown on the Final Plat recorded in Plat Book 47 at Page 69 of the records of Boone County, Missouri.

Tract 14 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 10 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 9 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 4-A as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 5 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 3-A as shown on the Survey recorded in Book 4221 at Page 55 of the Records of Boone County, Missouri.

WHEREAS, the undersigned desires to place the covenants and restrictions contained herein upon all of the above described tracts for its benefit and for the benefit of all future owners of said tracts; and

WHEREAS, the undersigned desires that said covenants and restrictions shall constitute covenants running with the land and the present and all future successive owners of said tracts shall have the right to invoke and enforce said



restrictions;

NOW, THEREFORE, the undersigned does hereby impose the covenants and restrictions herein set out on all of the above described tracts, which covenants and restrictions shall be considered as covenants running with the land whether or not the same are mentioned in subsequent conveyances, and said covenants and restrictions shall be binding upon the undersigned and its successors in title to the above described tracts and to its successor and assigns forever, to-wit:

#### USE RESTRICTIONS

1. That no manufactured home, mobile home, house trailer or modular home shall be located on any tract regardless of whether or not the same is located on a permanent foundation.

2. That no partially dismantled, nonoperating, wrecked, junked or discarded vehicle or equipment of any kind shall be located on any tract within view and no junkyard of any kind shall be located on any tract.

3. That no commercial dog kennel shall be permitted on any tract, no commercial feed lot shall be permitted on any tract and no commercial confined feeding of poultry shall be permitted on any tract.

4. That no tract shall be used or maintained as a dumping ground, and no rubbish, trash or garbage shall be kept on the premises of any tract except in sanitary containers. All containers or other equipment for the storage or disposal of such materials must be kept in a clean and sanitary condition and the contents of said containers must be removed from the premises at least once each week.

#### ASSOCIATION

5. The undersigned shall not later than December 31, 2013 cause to be incorporated a not-for-profit corporation under the laws of the state of Missouri to be known as Whitworth Hills South Homeowners Association, a Missouri not-for-profit corporation (or such other name selected by the undersigned in the event said name is not available), referred to herein as "Association" and the Association shall have the right, power and authority to collect assessments, set budgets and maintain the Easement Area described in the Roadway and Utilities Easement recorded in Book 4254 at Page 10 of the records of Boone County, Missouri. Each owner of a residential lot subject to these Restrictions shall be a member of the Association. The membership appurtenant to any residential lot shall not be separated from ownership of the residential lot. The Association shall be governed by the following provisions and shall have the following rights, powers, duties and responsibilities, to-wit:

a) The Association shall be governed by a Board of Directors, which shall consist of three (3) Directors appointed by the undersigned until such time that the undersigned has sold and conveyed title to all of the lots subject to this document. Thereafter the Directors shall be elected by the members of the Association who shall be entitled to one vote for each residential lot owned for the election of the Board of Directors. The election of Directors and the conduct of all affairs of the Association, shall be in accordance with the Articles of Incorporation and the By-laws established by the Directors of the Association, insofar as such By-laws do not conflict with the provisions of this Declaration and in case of conflict the provisions of this Declaration shall control.

b) Each owner of a residential lot by acceptance of a Deed, Contract for Deed or other form of conveyance therefor, whether or not it shall be so expressed in any such deed, contract or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments and special assessments, together with interest thereon and costs of collection as hereinafter provided, shall be a lien upon the residential lot against which such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof as herein provided, shall also be the personal obligation of the person who was the owner of such residential lot at the time the assessment was imposed.

c) The annual and special assessments shall be levied and used for the purposes of the Association specified herein including but not limited to the following:

1. To control, maintain, repair, alter and improve the Easement Area referred to herein.

2. To carry out and exercise all of its rights, powers and duties and to perform all of its obligations as set out herein.

3. To enforce all of the provisions of this document and to pay the expense of enforcing the provisions of this document including attorney fees and court costs.

d) The annual and special assessments of the Association shall be assessed equally against each residential lot and the owner(s) thereof which is subject to assessment as provided herein. The Association is hereby empowered



to make and collect during each year from the owner(s) of each residential lot an annual assessment in a sum sufficient for the above stated purposes, along with a reasonable balance for the purpose of unanticipated expenses. Special assessments shall be made and collected by the Association as required for the purpose set forth in this document.

At the time the undersigned Developer or the assignee of the Developer rights hereunder conveys title to a lot to an owner other than the undersigned Developer or an assignee of the Developer rights hereunder the new owner shall pay to the Association or pay to the Developer for transmittal to the Association an initial annual assessment on the lot in the amount of Five Hundred Dollars (\$500.00), and said initial annual assessment are due June 1 of every year.

e) In the event the owner of a lot obstructs or interferes with a Easement Area referred to above or violates any of the rules, regulations or restrictions adopted and prescribed by the Association with respect to the use of Easement Area, the Association shall have the right to impose an assessment on a lot for costs and expenses incurred by the Association in eliminating said obstruction or interference and in causing the Easement Area to conform to the rules, regulations and restrictions of the Association. Each owner of a residential lot by acceptance of a deed, contract for deed or other form of conveyance therefor, whether or not it shall be so expressed in any such deed, contract or other conveyances, shall be deemed to covenant and agree to pay the Association the aforesaid assessments to be fixed, established and collected from time to time as herein provided.

f) If any assessment (annual or special) is not paid on the due date, then such assessment shall become delinquent and shall, together with interest and costs of collection, thereupon become a continuing lien on the lot which shall bind such property in the hands of the owner, and said owner's heirs, devisees, personal representatives and assigns. The Association may file notice of lien with the Boone County Recorder of Deeds for delinquent assessments. The personal obligation of the then owner to pay such assessment, however, shall remain said owner's personal obligation and shall also pass to and be the personal obligation of said owner's successor in title to the lot.

g) If any assessment (annual or special) is not paid when due, the assessment shall bear interest from the date of the delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or an action to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment and interest the reasonable attorney fees and reasonable litigation expenses incurred in collection. No owner may waive or otherwise escape liability for the assessment provided for herein by claimed nonbenefit or

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nonuser of the benefits for which the assessment is imposed.

h) The lien of any assessment (annual or special) provided for herein shall be subordinate to the lien of any deed of trust now or hereafter placed upon a lot subject to assessment; provided however, notwithstanding the foregoing, this subordination shall not apply to any of the following:

1. Any assessment, interest, litigation expenses or attorney fees due at the time of the recording of the Deed of Trust; and

2. Any interest, litigation expenses or attorney fees regardless of when accrued if accrued in connection with assessments due at the time of the recording of the Deed of Trust; and

3. Any assessment, interest, litigation expenses or attorney fees accruing after a foreclosure sale or accruing after transfer of title in lieu of foreclosure proceedings.

The aforesaid subordination shall not relieve the personal obligation of the lot owners for the aforesaid assessments, interest, litigation expenses or attorney fees regardless of when accrued.

i) The Association shall contract with a professional firm to maintain the Easement Area.

j) Notwithstanding any other provisions contained herein, in no event shall any assessment be levied against an owner of a Tract that does not abut or use the Easement Area. For example, while the owner of Lot 3 is subject to the restrictions contained herein, in no event shall the owner of Lot 3 be assessed any expense of maintaining the roadway.

MODIFICATION

6. The covenants, restrictions and provisions contained herein may at any time hereafter be amended, modified or abrogated upon the written consent of (a) TOMPKINS HOMES AND DEVELOPMENT, INC., a Missouri Corporation, and (b) the owners of two-thirds (2/3) or more of the tracts subject to the provisions of this document; provided however, after TOMPKINS HOMES AND DEVELOPMENT, INC., a Missouri Corporation, no longer owns any of the tracts subject to the provisions of this document, the covenants, restrictions, and provisions contained herein may be amended, modified or abrogated upon the written consent of the owners of two-thirds (2/3) or more of the tracts subject to the provisions of this document.



**ENFORCEMENT**

7. Any owner of any above described tract subject to the provisions of this document may enforce the provisions of this document and shall have the right to proceed in law or in equity, or both, against any person or persons violating or attempting to violate any of the provisions of this document, including the remedy of injunction or damages, or both, and said remedies shall be cumulative and not exclusive, and in any said legal proceedings the prevailing party shall have the right to recover from the other party all reasonable litigation expenses including a reasonable attorney fee.

**TRACT DEFINITION**

8. The term "tract" as used herein shall be deemed to mean the above described Lot 3, Tract 14, Tract 10, Tract 9, Tract 4-A, Tract 5, and Tract 3-A, , except in the event hereafter a said tract is subdivided into smaller tracts by survey, plat, deed or other document, each said smaller tract shall thereupon be deemed a "tract" under the provisions of this document.

**MISCELLANEOUS**

9. Invalidation of any one of the provisions of this document by judgment or court's decree shall no in any way affect the validity of the other provisions herein which shall remain in full force and effect.

(Signature Page to Follow)

IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 12 day of December, 2013.

OWNERS:

TOMPKINS HOMES AND DEVELOPMENT, INC., a Missouri corporation

BY: *[Signature]*  
MICHAEL D. TOMPKINS, President

STATE OF MISSOURI    )  
  ) ss.  
COUNTY OF BOONE    )

On this 19 day of December, 2013, before me personally appeared Michael D. Tompkins, President of TOMPKINS HOMES AND DEVELOPMENT, INC., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

*Susan Ripley*  
NOTARY PUBLIC  
*Susan Ripley*

My commission expires 12/15/15.

Commissioned in Boone County.

