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Instrument #: 2013030523 Book: 4254 Page: 13

Grantor: TOMPKINS HOMES & DEVELOPMENT INC

Grantee: TOMPKINS HOMES & DEVELOPMENT INC

Instrument Type: ESMT

Recording Fee: \$39.00 S

No. of Pages: 6

Bettie Johnson, Recorder of Deeds



**ROADWAY AND UTILITY EASEMENT**

(Whitworth Hills North Road)

THIS EASEMENT, made and entered into this 12 day of December, 2013, by TOMPKINS HOMES AND DEVELOPMENT, INC., a Missouri corporation, hereinafter called "TOMPKINS" (Grantor/Grantee/Party/Parties):

WITNESSETH:

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

Lot 2 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 13 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 12 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 11 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 8 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

Tract 7 as shown on the Survey recorded in Book 4246 at Page 6 of the Records of Boone County, Missouri.

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

Tract 1-A as shown on the Survey recorded in Book 4221 at Page 55 of the

*Reference Book 4254 Page 14*

Boone County, Missouri  
Unofficial Document

BOONE COUNTY MO DEC 19 2013

Records of Boone County, Missouri.

Tract 2-A as shown on the Survey recorded in Book 4221 at Page 55 of the Records of Boone County, Missouri.

WHEREAS, TOMPKINS desires to create a perpetual, nonexclusive roadway and utility easement over and across Easement Area described below herein for the use and benefit of the present and future owners of Lot 2 , Tract 13, Tract 12, Tract 11, Tract 8, Tract 7, Tract 6, Tract 1A and Tract 2A;

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby grant and agree as follows:

1. That the undersigned does hereby grant and create a nonexclusive, perpetual roadway and utility easement over and across the following described easement area, herein called "Easement Area" as shown on the attached Exhibit "A" , to-wit:

A STRIP OF LAND LOCATED IN THE SOUTH HALF OF SECTION 30, TOWNSHIP 46 NORTH, RANGE 12 WEST, BOONE COUNTY, MISSOURI AND BEING PART OF TRACTS 2-A AND 4 OF THE SURVEY RECORDED IN BOOK 4221, PAGE 55 AND PART OF LOT 2 OF WHITWORTH HILLS, PLAT NO. 2 AND DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 4136, PAGE 153 AND THE TRUSTEES DEED RECORDED IN BOOK 4173, PAGE 38 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT 4 AND WITH THE NORTH LINE THEREOF, S70°16'05"E, 33.02 FEET TO THE POINT OF BEGINNING:

THENCE FROM THE POINT OF BEGINNING AND LEAVING SAID NORTH LINE, SAID STRIP BEING 30.00 FEET WIDE AND LYING 15.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE, S79°37'30"E, 71.54 FEET; THENCE 208.06 FEET ALONG A 1017.26-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD S73°45'55"E, 207.70 FEET; THENCE 111.99 FEET ALONG A 527.42-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, S61°49'25"E, 111.78 FEET; THENCE 164.81 FEET ALONG A 164.81-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, N85°07'20"E, 208.05 FEET; THENCE 193.93 FEET ALONG A 604.55-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD N36°47'40"E, 193.10 FEET; THENCE 60.40 FEET ALONG A 50.00-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD N62°12'45"E, 56.79 FEET; THENCE S83°10'50"E, 310.23 FEET; THENCE 385.68 FEET ALONG A 3150.00-

FOOT RADIUS CRUVE TO THE LEFT, SAID CURVE HAVING A CHORD S86°41'20"E, 385.44 FEET; THENCE N89°48'15"E, 189.04 FEET; THENCE S87°23'40"E, 730.58 FEET; THENCE 188.14 FEET ALONG A 165.00-FOOT RADIUS CRUVE TO THE RIGHT, SAID CURVE HAVING A CHORD S54°43'45"E, 178.11 FEET; THENCE S22°03'50"E, 44.35 FEET; THENCE 476.29 FEET ALONG A 235.00-FOOT RADIUS CRUVE TO THE LEFT, SAID CURVE HAVING A CHORD S80°07'30"E, 398.85 FEET; THENCE N41°48'45"E, 329.32 FEET TO THE END OF THIS DESCRIBED CENTERLINE.

for the use and benefit of the present and future owners of the above described Lot 2 , Tract 13, Tract 12, Tract 11, Tract 8, Tract 7, Tract 6, Tract 1A and Tract 2A for ingress to and egress from said tracts and for utility line access to said tracts, and with the right to install, grade, gravel, pave, repair and maintain a roadway in said Easement Area (hereinafter the "Roadway") and with the right to install, repair and maintain utility lines in said Easement Area which do not interfere with use of the Easement Area for roadway purposes, all for the use and benefit of the present and future owners of said Lot 2 , Tract 13, Tract 12, Tract 11, Tract 8, Tract 7, Tract 6, Tract 1A and Tract 2A.

2. The aforesaid Easement Area shall not be used for parking of vehicles or storage of any materials and shall not be blocked nor obstructed, and that no fence, gate or other obstruction shall be installed in the Easement Area.

3. The owners of each Tract which abuts or uses the Easement Area for access shall share equally with the owners of each other said Tract on a per Tract basis, through the Association as outlined in the Restrictive Covenants of Whitworth Hills North recorded in Book <sup>4254</sup> at Page 14 of the Records of Boone County, Missouri, the cost to maintain and repair the Easement Area and to install, maintain and repair the roadway, and all ditches in the Easement Area, and said Easement Area and the roadway in the Easement Area shall be kept in a reasonable state of repair except no owner of a Tract shall be obligated to pay any aforesaid cost unless said Tract abuts or uses the Easement Area for access.

4. In the event the roadway in the Easement Area is damaged by heavy trucks, heavy equipment or other unusual use, the party performing or procuring the performance of said use shall at the expense of said party promptly repair the damage to the roadway in a good and workmanlike manner , except no owner of a Tract shall be obligated to pay any cost to install or maintain a concrete roadway or an asphalt roadway in the Easement Area.

5. In the event the installation, repair or maintenance of any utility line in the Easement Area shall cause any damage to the Easement Area or the

Roadway, the party performing or procuring the installation, repair or maintenance of the utility line in the Easement Area shall at the expense of said party promptly repair said damage in a good and workmanlike manner.

6. All decisions pertaining to maintenance and repair of the Easement Area and pertaining to the installation, maintenance and repair of the roadway in the Easement Area that would result in an expenditure in excess of \$1,000 shall be determined by the owners of fifty-one percent (51%) or more of the Tracts which abut the Easement Area. Any decision for action resulting in an expenditure of less than \$1,000 shall be made at the direction of the Association's board of directors. Notwithstanding anything contained herein to the contrary, in the event of rutting or washing of gravel in portions of the Roadway exceeding a 7% grade, said damage occurring from other than heavy trucks, heavy equipment or other unusual use, or in the event of damage from erosion or soil movement in the Easement area adjacent to said portions of the Roadway, the Roadway and/or Easement Area shall be repaired. The cost of said repairs shall be shared equally with the owners of each other said Tract on a per Tract basis, without the need for a vote of fifty-one (51%) or more.

7. In the event the owner of any Tract which uses or abuts the Easement Area fails to pay such owner's share of the cost and expense of maintenance and repair of the Easement Area or of installation, maintenance or repair of the roadway in the Easement Area or should any such owner fail to repair any damage caused by such owner as required in paragraphs 4 and 5 above, then the Association or any owner of any other said Tract shall have the right to pay said costs and expenses and/or the cost to repair any said damage, and the owner failing to pay the same shall reimburse the owner paying the same the amount of said costs and expenses so paid, together with interest thereon at the rate of twelve percent (12%) per annum from the date of demand, and the owner entitled to such reimbursement shall also be entitled to recovery from the owner who fails to pay the same the costs and expenses incurred in connection with enforcing said right of reimbursement, including court costs, reasonable litigation expenses and reasonable attorney fees.

8. That the owner of each tract shall have the right to 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, to include 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 court costs and reasonable attorney fees.

9. The term "Tract" as used herein shall be deemed to mean the above

described Lot 2 , Tract 13, Tract 12, Tract 11, Tract 8, Tract 7, Tract 6, Tract 1A and Tract 2A, 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.

10. That no deed or other conveyance of title to any part of the above described real estate hereafter shall be deemed to abrogate or amend this easement unless executed by all appropriate parties and unless expressly so stated in said document which must specifically refer to this paragraph of this document.

11. The easements and covenants herein contained shall run with the land and shall inure to and be binding upon the undersigned and upon the successors in title to the above described Tracts.

TO HAVE AND TO HOLD said easements and rights unto the parties hereto and their successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has hereunto executed this easement the day and year first above written.

{SIGNATURE PAGE TO FOLLOW}

TOMPKINS:

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, 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.

