

# Boone County, Missouri



Unofficial Document

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*Nora Dietzel*  
Nora Dietzel, Recorder of Deeds



## ROADWAY AND UTILITY EASEMENT

(Rokes Bend Phase 3)

THIS EASEMENT, made and entered into this 9 day of May, 2018, by TOMPKINS HOMES AND DEVELOPMENT, INC., a Missouri corporation, hereinafter called "TOMPKINS" (Grantor/Grantee):

WITNESSETH:

WHEREAS, the undersigned is the owner of the following described Six (6) tracts of real estate situated in Boone County, Missouri, to-wit:

TRACT 32, TRACT 33, TRACT 34, TRACT 35, TRACT 36, and TRACT 37:

Tracts 32, 33, 34, 35, 36 and 37 of the Survey for Tompkins Homes and Development, Inc., recorded in Book 4990, Page 7, Deed Records of Boone County, Missouri.

WHEREAS, TOMPKINS desires to create a perpetual, nonexclusive roadway and utility easement over and across the Easement Area described below herein for the use and benefit of the present and future owners of Tract 32, Tract 33, Tract 34, Tract 35, Tract 36 and Tract 37;

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", to-wit: *Legal Page 2*

Nora Dietzel, Recorder of Deeds

# Boone County, Missouri

BOONE COUNTY MO MAY 09 2018

## Unofficial Document

A STRIP OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTHEAST QUARTER OF SECTION 27, ALL IN TOWNSHIP 47 NORTH, RANGE 13 WEST, BOONE COUNTY, MISSOURI AND BEING PART OF A TRACT DESCRIBED BY A DEED OF INDEPENDENT PERSONAL REPRESENTATIVE RECORDED IN BOOK 4551 AND PAGE 14 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 22 AND WITH THE WEST LINE THEREOF, N 1°13'10"E 1193.61 FEET TO THE SOUTHWEST CORNER OF A SURVEY RECORDED IN BOOK 687, PAGE 579; THENCE LEAVING SAID WEST LINE AND WITH THE SOUTH LINE OF SAID SURVEY, S 62°30'40"E, 657.78 FEET TO THE SOUTHEAST CORNER OF SAID SURVEY; THENCE 55.23 FEET ALONG A 390.00-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, S 42°58'05"E, 55.18 FEET; THENCE S 38°55'30"E, 491.85 FEET; THENCE 48.80 FEET ALONG A 1062.00-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 40°14'30"E, 48.79 FEET TO THE POINT OF BEGINNING:

THENCE FROM THE POINT OF BEGINNING, SAID STRIP BEING 30 FEET WIDE WITH 15 FEET LEFT AND RIGHT AND ADJACENT TO THE FOLLOWING DESCRIBED CENTERLINE, S 47°32'00"W, 132.41 FEET; THENCE 143.43 FEET ALONG A 300.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 33°50'10"W, 142.07 FEET; THENCE S 20°08'25"W, 254.93 FEET; THENCE 65.52 FEET ALONG A 200.00-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 10°45'15"W, 65.23 FEET; THENCE S 1°22'05"W, 287.40 FEET TO THE END OF THIS DESCRIBED CENTERLINE.

for the use and benefit of the present and future owners of the above described Tract 32, Tract 33, Tract 34, Tract 35, Tract 36 and Tract 37 for ingress and egress from said tract and for utility line access to said tracts, and with the right to install, grade, gravel, pave, repair and maintain a roadway, landscaping and signs in said Easement Area 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 Tract 32, Tract 33, Tract 34, Tract 35, Tract 36 and Tract 37.

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 shall share equally with the owners of each other said Tract on a per Tract basis, through the Association, as outlined in below, the cost to maintain and repair the Easement Area and to install, maintain and repair the roadway, landscaping and signs in the Easement Area, and the parties agree that

Nora Dietzel, Recorder of Deeds

# Boone County, Missouri

BOONE COUNTY MO MAY 09 2018

## Unofficial Document

said Easement Area and the roadway, landscaping and signs in the Easement Area shall be kept in a reasonable state of repair.

4. The undersigned shall not later than December 31, 2018 cause to be incorporated a not-for-profit corporation under the laws of the state of Missouri to be known as Rokes Bend Phase 2 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. 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:

Nora Dietzel, Recorder of Deeds

## Unofficial Document

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 assessment on the lot in the amount of One Thousand Dollars (\$1,000.00), and an annual assessment on the lot in the amount of Five Hundred Dollars (\$500.00) each year thereafter, and said 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

## Unofficial Document

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 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 and shall cause said areas to be maintained for its benefit by a professional management firm.

j) Notwithstanding any other provisions contained herein, neither the undersigned Developer nor any assignee of the Developer rights hereunder shall be obligated to pay any of the annual assessments, special assessments, drainage easement assessments or other assessments specified herein which are imposable upon a lot or upon the owner of a lot and

## Unofficial Document

said assessments may be imposed upon a lot or upon the owner of a lot only after the lot is owned by a person or entity other than the undersigned Developer or the assignee of the Developer rights hereunder.

5. In the event the roadway, landscaping or signs 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.

6. In the even the installation, repair or maintenance of any utility line in the Easement Area shall cause any damage to the Easement Area or the roadway, landscaping or signs in the Easement Area, 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.

7. All decisions pertaining to maintenance and repair of the Easement Area and pertaining to the installation, maintenance and repair of the roadway, landscaping or signs 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.

In the event the owner of any Tract 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 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 nine percent (9%) 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. In the event the owner of any Tract which uses or abuts the Easement Area 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

# Boone County, Missouri

BOONE COUNTY MO MAY 09 2018

## Unofficial Document

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 Tract 32, Tract 33, Tract 34, Tract 35, Tract 36 and Tract 37, 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. However, in no event shall any parcel resulting from a subdivision of a Tract that does not have access to the Easement Area be subject to the obligations contained herein.

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.

TOMPKINS:

TOMPKINS HOMES AND DEVELOPMENT,  
INC., a Missouri corporation

BY: 

MICHAEL D. TOMPKINS, President

Nora Dietzel, Recorder of Deeds





