

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TOWNHOMES NORTH AT PORT ORANGE

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Tompkins Land and Housing, Inc., a Florida Corporation, hereinafter referred to as "Developer" is the owner of all of Townhomes North at Port Orange in Port Orange, Volusia County, Florida, as per Map Book 40, Page 16-17, Public Records of Volusia County, Florida, referred to as "Development" and intends to construct one dwelling on each of the lots thereof, such residence to be constructed in one and two-story single family attached residences in the townhouse concept; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in the Development and for the maintenance of Common Areas and structures, and to this end, desires to subject the said real property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said real property and each owner; and

WHEREAS, the Developer may cause further units of contiguous lands described on Schedule A attached hereto to be subdivided over the next several years and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in the development, that there be an agency to which will be delegated and assigned the powers of maintenance and administration of Common Areas described in said Plat, administering and enforcing the covenants and restrictions and charges hereinafter described for the orderly enjoyment of the Development; and,

WHEREAS, there has been incorporated under the laws of the State of Florida, as a Not-for-Profit Corporation, Townhomes North at Port Orange Homeowners' Association, Inc., hereinafter referred to as the "Association" for the purposes of exercising the functions aforesaid;

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CLERK OF COUNTY  
OF VOLUSIA, FLORIDA

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NOW, THEREFORE, the Developer declares that the real property described above is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth. This declaration shall become effective on the date of recording thereof among the Public Records of Volusia County, Florida.

ARTICLE I

DEFINITIONS

SECTION 1. "Association" shall mean and refer to Townhomes North at Port Orange Homeowners' Association, Inc., its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described on the Plat of Townhomes North at Port Orange and hereby incorporated by reference into and made an integral part of this Declaration.

SECTION 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

SECTION 6. "Declarant" shall mean and refer to Tompkins Land and Housing, Inc., its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II  
PROPERTY RIGHTS

SECTION 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area; The recreational facility designated for Townhomes North at Port Orange is located in Townhomes West at Port Orange, Phase I.

b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes as shown on the plat of Townhomes North at Port Orange and subject to such conditions as may be agreed to by the members and subject to the approval of FHA/VA and the City of Port Orange;

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

SECTION 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every owner of a Lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. The Association shall have two clases of voting membership.

CLASS A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members.

The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

**CLASS B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, which ever occurs earlier:

- a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership OR
- b) on December 31, 1990.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

###### **SECTION 1. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- 1) annual assessments or charges, and 2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the homes situated upon the properties.

SECTION 3. Maximum Annual Assessment. Until January 1 of the year

immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have that assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Notice and Quorum for any Action Authorized Under Sections 3 and

4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At such meeting called, the presence of members or of proxies entitled to cast the majority of all the votes of each class of membership shall constitute a quorum.

SECTION 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**SECTION 7. Date of Commencement of Annual Assessments;** ~~DIVISION C~~ **CO-FL**

annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth that whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

**SECTION 8. Effect of Nonpayment of Assessments; Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent (6%) per annum. The Association may bring an action at Law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

**SECTION 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments hereafter becoming due or from the lien thereof.

**ARTICLE V**

**RESTRICTIVE COVENANTS**

**SECTION 1.** The areas included within the lot line of each individual lot,

but not included within the dwelling constructed on such lot, such areas being hereinafter referred to as "grounds", shall be used for normal and customary yard purposes. No structures can be erected or placed on the grounds without the written approval of the Association, or except in accordance with regulations enacted by the Association. The term "structure" as used herein shall include, but is not limited to, swimming pools, fences, walls, barbeque pits, television or radio antennas, clotheslines, garages, sheds, outbuildings, porches, balconies, patios, recreation facilities such as basketball courts or goals, tennis courts, shuffleboard courts, and lawn decorative objects such as statues, tables, etc.

**SECTION 2.** The Association shall have legal title to the Common Areas, and shall be responsible for operation, management and maintenance of the same. The Association shall have the duty and power to enact reasonable and uniform regulations governing the use of the Common Area. The Common Area shall be used exclusively for natural preservation and/or recreation, drainage, and as otherwise specified on the recorded plats.

**SECTION 3.** In order to maintain uniformity of appearance, no owner of any dwelling shall change exterior materials or colors, either of the exterior walls or roof of said dwelling without specific written approval of the Association. The Association shall have the right from time to time to adopt and enforce rules and regulations for the maintenance and appearance of the exteriors of dwellings and of other structures.

**SECTION 4.** All owners shall keep their lawns and interior yards mowed and maintained, free of disease, bugs, and in a presentable condition, and shall not permit any unsightly growth, weeds or underbrush on their grounds. The Association will maintain that portion of each front yard lying between the owner's front building line and the abutting right of way of each street within the subdivision and that portion of the rear yard between the patio fence and the rear lot line which is devoted to yard purposes and the side yards of each lot where the building does not extend completely from side lot line to side lot line, the cost of which will be included in the monthly assessment.

The Association shall have the right to adopt rules and regulations to enforce this provision.

**SECTION 5.** Each owner of a lot or dwelling unit agrees to maintain fire and extended coverage casualty insurance on the improvements on said lot, or on said dwelling unit, in a sufficient amount to cover the fair market value of such improvements, and he shall use the proceeds thereof exclusively to repair or replace any damage to or destruction of improvements completely, and promptly to its original condition after receipt of the insurance proceeds, provided that the Homeowners' Association does not purchase and maintain a blanket insurance policy for this purpose.

**SECTION 6.** No livestock, poultry or animals of any kind or size shall be raised, bred, or kept on any lot provided, however, that dogs, cats, or other domesticated household pets may be raised and kept provided such pets, are not kept, bred, or maintained for any commercial use. Such approved pets shall be kept on the owners lot and shall not be permitted to roam free. Such pets shall be limited in number to two (2) of a kind over the age of six months. (Hence two cats, two dogs, etc.)

**SECTION 7.** No automobile or other motorized vehicle that is not operable shall be repaired or stored in or on any parking area. No trailers, mobile homes, trucks or any other type of vehicle other than privately owned automobiles or motorized two wheel vehicles are to be parked or stored in or on any parking area in front of a residence. The Association shall have the right to adopt rules and regulations to enforce this provision.

**SECTION 8.** As stated on the plat for Townhomes North at Port Orange, there have been established and will be established easements for the installation, construction, maintenance and repair of the common areas within and outside of the Development. These easements shall be established by one or more of the following methods, towit:

a) By a specific designation of an easement on the recorded plat of this Development.

b) By a reservation or specific statement providing for an easement in the deed of conveyance of a given lot in the Development, OR



c) By a separate instrument to be subsequently recorded by the Declarant.

**SECTION 9.** No lot or dwelling unit shall be used for any purpose except for a residential dwelling. The term "residential" is intended to prohibit any commercial use, even professional office use. The only exception to Section 9, shall be; Tompkins Land and Housing, Inc. shall erect and maintain a building for the exclusive use of Tompkins Land and Housing, Inc. as a model and sales office until such time as project is completed, and the last residential dwelling unit is completed and sold to the homeowner of such unit.

**SECTION 10.** No sign of any kind shall be erected, permitted to remain on or be displayed to public view on or from any lot, except an approved sign giving the name of the occupant of the residence located on said lot or an approved sign advertising the premises for sale or rent. All signs shall be approved by the Homeowners' Association.

**SECTION 11.** No obnoxious or offensive activity or behavior shall be conducted or permitted to exist upon any lot that may be or may become an annoyance or private or public nuisance.

**SECTION 12.** All units will be pre-wired for cable television. Therefore, no exterior antenna of any kind shall be erected or otherwise permitted by anyone to be attached to any unit, or natural habitat of said property.

**SECTION 13.** An easement of necessity is hereby granted permitting owners and the appropriate association or associations to enter adjacent lots for the specific purpose of painting, maintenance, repair or reconstruction of a party wall or structure. Such entry shall be made in a reasonable manner and at a reasonable time, and any damage caused by such entry shall be repaired as soon as practicable and at the expense of the owner of the party wall or structure who causes such entry to be made.

ARTICLE VI

EXTERIOR MAINTENANCE

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VII

ARCHITECTURAL CONTROL

Except as to Declarant, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

PARTY WALLS

SECTION 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not in compliance with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**SECTION 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**SECTION 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**SECTION 4. Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**SECTION 5. Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**SECTION 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be made by a majority of all the arbitrators.

**SECTION 7. Easement for Encroachments.** Should any part of any Unit encroach onto another lot, there shall be deemed to be an easement granted over so much of the lot as is encroached upon, to remain so long as the encroachment remains.

#### ARTICLE IX

##### GENERAL PROVISIONS

**SECTION 1. Enforcement.** The Association, or an Owner, shall have the right to enforce, by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of right to do so thereafter.

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**SECTION 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**SECTION 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. No amendment modifying or terminating the obligation of the Association to maintain the Common Areas will be effective without the approval of FHA/VA and the City of Port Orange.

**SECTION 4. Annexation.** Additional land within the areas described in Schedule A, attached hereto, may be annexed by the Declarant without the consent of members within five (5) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

**SECTION 5. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 18<sup>th</sup> day of August, 1988.

WITNESSES:

Spada S. S. S.  
Spada S. S.

Tompkins Land and Housing, Inc., a  
Florida Corporation

BY: Raymond W. Tompkins  
RAYMOND W. TOMPKINS, PRESIDENT

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF VOLUSIA )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of August, 1988, by Raymond W. Tompkins as President of Tompkins Land and Housing, Inc. a Florida Corporation.

Notary Public  
State of Florida at Large  
My commission expires: My Commission Expires Oct. 29, 1990  
Bonded By SAFCO Insurance Company of America

"SCHEDULE A"

A portion of Government Lot 6, Section 31, Township 15 South, Range 33 East, Volusia County, Florida, described as follows:

From the Southwest corner of said Section 31, run South 88°41'44" East along the South line of said Section 31 a distance of 1357.65 feet; thence departing said line, run North 00°48'44" West along the West line of said Government Lot 6 and the West line of Townhomes West at Port Orange, Phase I, as recorded in Plat Book 40, Pages 16 and 17, of the Public Records of Volusia County, Florida, a distance of 634.74 feet to the Point of Beginning; thence continue North 00°48'44" West along the West line of said Government Lot 6 a distance of 1016.39 feet; thence departing said line, run South 88°41'44" East a distance of 614.58 feet to the Westerly right-of-way line of Clyde Morris Boulevard, a 100 foot right-of-way as described in Official Records Book 1031, Page 447, of the Public Records of Volusia County, Florida; thence South 31°32'24" East along said right-of-way line, a distance 189.33 feet; thence departing said right-of-way line run South 00°16'31" East a distance of 831.25 feet to the North line of the South 660.00 feet of said Government Lot 6; thence South 01°09'38" West a distance of 2.25 feet to the boundary of said Townhomes West at Port Orange, Phase I; thence along said boundary, run South 01°09'38" West a distance of 10.00 feet; thence North 88°50'22" West a distance of 363.72 feet; thence departing said boundary, run South 89°11'16" West a distance of 339.18 feet to the Point of Beginning, of this description.

Containing 16.17 acres.