

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR KINGSMILL SUBDIVISION

THIS DECLARATION, made this 12th day of March, 1986, by TOMPKINS LAND AND HOUSING, INC., a Florida corporation, (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant are the owners of certain property in the County of Brevard, State of Florida, which is more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein;

NOW THEREFORE, Declarant hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to KINGSMILL HOME OWNERS 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 on an obligation.

Section 3. "Properties" shall mean and refer to that certain real property herein 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 owned by the Association for the common use and enjoyment of the

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owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot as described as follows:

Park Areas consisting of Lot 43, Block 2, Kingsmill, as recorded in Plat Book 32, Page 58 of the Public Records of Brevard County, Florida, the canal adjacent to the east side of the Kingsmill Subdivision, Lot 1, Block 2, Kingsmill, as recorded in Plat Book 32, Page 58 of the Public Records of Brevard County, Florida, and the canal adjacent to the west side of the Kingsmill Subdivision, which park areas the Declarant will dedicate to the Association after development.

Section 5. "Lot" shall mean and refer to the plots of land shown upon any recorded subdivision plat or plats of Kingsmill Subdivision.

Section 6. "Declarant" shall mean and refer to TOMPKINS LAND AND HOUSING, INC., its successors and assigns, if such successors or assigns should acquire more than ten undeveloped Lots from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners Easement 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 provision:

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 and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by three-fourths (3/4) of the members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, 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. The Association shall have two (2) classes of voting Membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and each Class "A" Owner shall be

entitled to one (1) vote for each Lot owned.

Class B. The Class B Member shall be the Declarant or its representative and it shall be entitled to three (3) votes for each Lot it owns.

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 covenant and agree, as further described and detailed in Section 7 of this Article IV, 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:

A. Annual assessments or charges. Such assessment shall be SIXTY AND NO/100 DOLLARS (\$60.00) per year, or shall be more if raised according to the procedure described in Article IV, Section 3 below.

B. Special assessments for capital improvements. Such assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' 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 attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Exemption from Assessments. Notwithstanding the provisions of Article IV hereof, neither the Declarant, its successors or assigns, or a builder who purchases a Lot to build a residence thereon, shall be required to pay any of the

assessments referred to in Article IV. On the date a residence is conveyed to a third party purchaser, such purchaser shall be obligated to pay assessments from that date in accordance with the terms of this Article IV.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Properties, for the maintenance and improvements of the Common Areas, for the establishment and maintenance of recreational facilities on the park areas, which facilities will include playground equipment, and for the erection and maintenance of fencing along the canals where required. The Association shall be responsible for and shall pay all ad valorem taxes assessed against the Common Areas.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance by the Declarant of the first Lot to an owner, the maximum annual assessment shall be SIXTY AND NO/100 DOLLARS (\$60.00) 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 ten percent (10%) above the maximum assessment for the preceding 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 more than ten percent (10%) above the maximum annual assessment for the preceding year, by a vote of three-fourths (3/4) of the members who are voting in person or by proxy at a meeting duly called for said purpose.

C. The Board of Directors of the Association may fix the annual assessment at any amount not in excess of the maximum.

D. The assessments on Lots owned by the Declarant may be reduced to no less than twenty-five percent (25%) of the

assessment levied to owner occupant Lots; provided, however, the Declarant pay any deficiency in the operating costs of the Kingsmill Homeowners Association.

Section 5. 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 any capital improvement upon the Common Area, provided that any such assessment shall require the assent of three-fourths (3/4) of the members voting in person or by proxy, at a meeting duly called for said purpose.

Section 6. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of making any assessment shall be given to each member of the Association not less than thirty (30) nor more than sixty (60) days prior to the meeting, and notice of any such meeting shall be given by personal delivery or mailing, and mailing by the Association to the members thereof shall be deemed notice to such members. At the first such meeting called, the presence at the meeting of members or proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. 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 or annual basis.

Section 8. Date of Commencement of Annual Assessments and Due Dates. The 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 of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth that the assessments in a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on any Lot shall be binding upon the Association as of the date of its issuance.

Section 9. 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 ten percent (10%) per year. The Association may bring an action at law against the owner personally obligated to pay the assessment or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. 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 any assessment lien. However, the sale or transfer of a Lot pursuant to mortgage foreclosure, or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

USE RESTRICTIONS

All Lots in the aforementioned tract shall be known and described as residential Lots. No Lot or Lots shall be used for any purpose other than residential use. It is the intention and purpose of this Declaration to assure that all dwellings shall be of a quality of workmanship and material substantially the same or better than that which can be produced on the date these Declarations are recorded. The ground floor area of the main structure and any living unit constructed on any of the residential sites covered by these Declarations, exclusive of open porches and garages or carports, shall not be less than one thousand five hundred (1500) square feet for such living unit.

No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum setback lines, if any, shown on the recorded plat. In any event no building shall be located on any Lot nearer than twenty-five (25) feet to the front Lot line or nearer than twenty (20) feet to any side street line. No building shall be located nearer than seven and one-half (7-1/2) feet to an interior Lot line, and the sum of side yard setbacks on any one Lot shall not be less than fifteen percent (15%) of the total frontage of the Lot. No building shall be located on any interior Lot line nearer than twenty-five (25) feet to the rear Lot line. For the purpose of this Declaration, eaves, overhands and open porches shall not be considered as a part of a building; however, this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

No dwelling shall be erected or placed on any Lot having a width of less than seventy-five (75) feet at the minimum setback line, nor shall any dwellings be erected or placed on any Lot having an area of less than ten thousand (10,000) square feet.

No unlicensed or non-operative motor vehicle may be parked on any Lot at any time. No commercial vehicle shall be parked on

any Lot except when rendering a service or making a delivery. Special vehicles, boats and boat trailers, or campers of any type, including, but not limited to, either self-propelled or towed, may not be stored in the Common Area or residential area of the Properties except in enclosed garages or enclosed areas which completely screen or blind the equipment from Common Areas, recreational areas, streets or adjacent residences. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on any Lot. No vehicle shall be parked at any time on any front or side lawns or areas.

Whether or not provision therefor is specifically stated on any conveyance of title made by the Developer, the owner of each and every Lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building, wall, tool shed, storage shed or other structure shall be placed upon said Lot unless and until one set of building plans, one set of building specifications, and one copy of the plot plan have been submitted and have been approved in writing by the Architectural Control Committee. Each such building, wall, tool shed, storage shed or other structure shall be placed on the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans and specifications by the Architectural Control Committee may be based upon any ground, including purely esthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. Buildings, walls, toolsheds, storage sheds or other structures not made an integral part of the architectural design of the main structure shall be prohibited. No alteration in exterior appearance, including color of the building or structures shall be made without like approval of the Architectural Control Committee. No alteration to the front porch, stairs, walkways or front yard shall be made without like approval of the Architectural Control Committee. No screen enclosure shall be placed on the front of the house. The

appearance of the house may not be changed by any means, including, but not limited to, front screen enclosure, placement of concrete or gravel in front yards, etc., without approval of the Architectural Control Committee.

Any Owner whose Lot abutts a retention canal has the right, at such Owner's sole expense and sole liability, to install an access gate to the canal on the fence erected by the Declarant which borders the Owner's Lot and the canal.

No sign of any kind shall be displayed to the public on any Lot except one sign of not more than five square feet advertising the property for sale or for rent. Notwithstanding the foregoing, during such time as a Declarant holds Lots for development and resale, the Declarant shall be permitted to display signs customarily used by Developers for the advertisement of their projects.

Nothing shall be done on any Lot which may be or become an annoyance or nuisance to the neighborhood. No cattle, swine, goats, poultry or fowl shall be kept on any Lot for commercial purposes or otherwise. Household pets shall not exceed two (2) in number and shall not be bred for commercial purposes, and shall be leashed when outside. No clothing or any other household fabric shall be hung in the open on any Lot unless the same is hung from an umbrella or retractable clothes line hanging device which is removed from view when not in use or unless the same are enclosed by a fence or other enclosure at least six inches higher than such hanging articles, providing, however, that such fence or other enclosure does not otherwise violate the provisions hereof. Garbage cans, fuel oil tanks, other storage tanks, swimming pool filters, etc., shall be of the underground type or completely concealed by hedges, lattice work or screening. No CB or Ham radio towers will be permitted on any Lot, or house, unless approved by the Architectural Control Committee. If a cable television system is installed on the Properties, the use of television antennas shall be prohibited,

and all existing television antennas shall be removed within ninety (90) days of the date the cable television system becomes operative. No building materials or supplies of any kind may be stored on any Lot. Garbage and trash containers are to be placed in proper area for pick-up, only on day of pick-up, and removed from pick-up area the same day.

No fencing of front yard area except decorative or landscape fencing not more than three (3) feet high or with a minimum of two (2) feet between horizontal rails shall be permitted. No boundary wall, fence or hedge of any type or height shall be erected on any Lot without first obtaining the written approval of the Architectural Control Committee as to the type, height and materials to be used and as to which side faces public area. In no event shall any wall, fence or hedge be constructed or maintained with a height of more than six (6) feet.

No individual water supply system shall be permitted on any Lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of Brevard County, and Florida State Board of Health. Individual wells to be used for irrigation, air conditioning and heating systems or swimming pools shall be permitted.

All trees four inches in diameter or larger shall be preserved unless they exist in a proposed 1) public or private easement area, 2) drainage facility, 3) driveway or 4) recreational area or within five feet of a proposed structure.

The design and color of the United States mailboxes shall be uniform throughout the Properties.

Aboveground pools will not be permitted without first obtaining the written approval of the Architectural Control Committee. Refusal of approval by the Architectural Control Committee may be based on any ground, including purely esthetic grounds. In cases where the backyard surrounding a pool is not fenced, the pool itself must be enclosed with a fence or other suitable enclosure. Prior to the construction of said fence,

approval of fence design shall be obtained from the Architectural Control Committee.

No lot shall be divided or subdivided.

The Architectural Control Committee shall consist of two (2) or more persons, appointed by Declarant, Tompkins Land & Housing, Inc., within one (1) year of recording of the plat. The Architectural Control Committee may appoint additional members as it deems necessary.

ARTICLE VI

ASSOCIATION MAINTENANCE

Section 1. Maintenance. The Association shall have the responsibility of maintaining the Common Area, including, but not limited to, the fences erected by Declarant along the canals and the recreational facilities, in good repair and in the same condition as originally constructed by the Declarant. The Association shall have the responsibility of maintaining said property in accordance with the maintenance standards established from time to time by Brevard County, the City of Melbourne or any other governmental authority exercising jurisdiction.

Section 2. City's Right to Maintain. In the event that the Association shall fail to carry out its responsibilities as set forth in Section 1 within thirty (30) days of a directive to do so from the City of Melbourne, the City may, at its election but shall not be obligated to, enter upon the property and perform such maintenance work which, in the sole discretion of the City, shall be required.

Section 3. Enforcement. In the event that the City of Melbourne shall elect to do any maintenance work in accordance with Section 2 hereof, the Association shall be obligated to pay the cost incurred by the City for such work. Upon the failure of the Association to do so promptly upon demand the City shall have the right to record a certificate setting forth the amount of said cost in the Public Records of Brevard County, Florida, which shall act as a lien against all of the Lots of the subdivision of

equal and like dignity to any annual or special assessment as provided for in this Declaration. The City shall have all of the rights to enforce said lien as are granted to the Association by this Declaration for the enforcement of assessments by the Association. The City may foreclose said lien in its own name in accordance with the procedures authorized by Florida Statutes for the foreclosure of special assessments liens.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any 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 the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way 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 by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. As long as the Declarant own seventy-five percent (75%) of the Lots, the following actions will require prior VA or FHA approval:

- A. Annexation of additional properties.
- B. Dedication of Common Area.
- C. Amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hands and seals, this 12th day of March, 1986.

DECLARANT:

Signed, sealed and delivered in the presence of:

[Signature]
[Signature]

TOMPKINS LAND AND HOUSING, INC.

By: [Signature]
Raymond W. Tompkins,
President

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared RAYMOND W. TOMPKINS, well known to me to be the President of TOMPKINS LAND AND HOUSING, INC., named Declarant in the foregoing instrument, and that he acknowledged executing the same in the presence of two (2) witnesses freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of March, 1986.

[Signature]
Notary Public
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
COMMISSION EXPIRES 12/31/86

EXHIBIT "A"

Legal Description:

Begin at the intersection of the north right-of-way line of Lake Washington Road and the west line of Longwood Estates Phase II as recorded in Plat Book 29, Page 48, Public Records of Brevard County, Florida; Thence S.89°00'10"W., along said right-of-way line, 343.93 feet; thence continue along said right-of-way line, S.89°20'43"W., 1,315.69 feet to the southeast corner of Ranchwood Estates as recorded in Plat Book 25, Page 45; Thence N.00°19'04"E., along the east line of Ranchwood Estates, 1,275.97 feet; Thence continue along said east line, N.00°24'45"E., 800.49 feet to the northeast corner of said Ranchwood Estates; Thence N.00°13'39"E., 1,185.15 feet to the south line of Park Place as recorded in Plat Book 29, Page 34; Thence S.89°41'11"E., along the south line of Park Place and the easterly extension thereof, 1,648.55 feet to the intersection of the northerly extension of the west line of Longwood Estates Phase II; Thence S.00°07'00"W., along the west line of Longwood Estates Phase II and the northerly extension thereof, 3,231.52 feet to the Point of Beginning.

STATE OF FLORIDA, COUNTY OF BREVARD
I HEREBY CERTIFY that the above and foregoing is
true copy of the original filed in this office

SCOTT ELLIS, Clerk Circuit and County Court

Dated

March 2, 2003



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