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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HILLTOP FARMS ("Declaration"), made this 18th day of February, 2003, by THOMAS & THOMAS DEVELOPERS, INC., NORMAN R. THOMAS, PRESIDENT, an Indiana corporation, (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the sole owner in fee simple of certain real estate located in the Town of New Whiteland, Johnson County, Indiana, more particularly described in the attached Exhibit A ("Real Estate"); and

WHEREAS, Declarant is developing the Real Estate and certain surrounding lands within the tract described in the attached Exhibit B, upon which Declarant may, but is not obligated to, construct residential facilities, which shall be known as "Hilltop Farms" and which may be Platted by Declarant in sections from time to time; and

WHEREAS, the Real Estate has been Platted by Declarant as Section One of Hilltop Farms on 2/16/2003, as Instrument No. 2003-007072 in the Office of the Recorder of Johnson County, Indiana; and
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WHEREAS, Declarant desires to subject the Real Estate to certain covenants and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate or within Hilltop Farms; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas and other improvements located or to be located in Hilltop Farms, which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Hilltop Farms; and

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the

benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

1 GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within Hilltop Farms, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within Hilltop Farms and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Hilltop Farms.

2 DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Section 2:

2.1 Architectural Control Committee. "Architectural Control Committee" or "ACC" means the Hilltop Farms Architectural Control Committee to be appointed in accordance with Section 4 of this Declaration.

2.2 Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of this Declaration.

2.3 Association. "Association" means Hilltop Farms Owners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

2.4 Board of Directors. "Board of Directors" means the Board of Directors of the Association elected pursuant to the Articles and Bylaws of the Association.

2.5 Common Amenities. "Common Amenities" means any landscaping, decorative signage, lighting or other such common amenities provided by the Association within the Streets, Easements or Common Areas.

2.6 Common Areas. "Common Areas" means those areas shown as Common Area on the Plat or Plats of Hilltop Farms as may be recorded from time to time, and which is intended for the common benefit of all Lots, together with the improvements made thereto and facilities located

thereon, which shall specifically include, without limitation, the storm water retention lakes and appurtenant drainage improvements and/or facilities located within such areas.

2.7 Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Amenities and Common Area, and any other cost or expense incurred by the Association for the benefit of the Common Amenities and Common Area.

2.8 Declarant. "Declarant" means Thomas & Thomas Developers, Inc., an Indiana Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Thomas & Thomas Developers, Inc. as developer of Hilltop Farms.

2.9 Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment, facilities and lakes located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Hilltop Farms.

2.10 Easements. "Easements" refer to those areas reserved as easements on the Plat or Plats of Hilltop Farms, as the same may be recorded from time to time.

2.11 Lake Lots. "Lake Lots" means any of the Lots numbered and identified on the Plat or Plats of Hilltop Farms, as the same may be recorded from time to time.

2.12 Lot. "Lot" means any of the separate parcels numbered and identified on the Plat or Plats of Hilltop Farms, as the same may be recorded from time to time.

2.13 Mortgage. The term "Mortgage" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.14 Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

2.15 Plat. "Plat" means the final Plat or Plats of Hilltop Farms as the same may be recorded from time to time in the Office of the Recorder of Johnson County, Indiana.

2.16 Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Amenities, Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

2.17 Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat or Plats of Hilltop Farms, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

2.18 Hilltop Farms. The term "Hilltop Farms" means and includes all sections thereof as shall have been Platted and recorded from time to time by Declarant in accordance with the provisions of this Declaration.

3 GENERAL RESTRICTIONS

3.1 Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Declarant will bushhog Lots owned by Declarant not less than three (3) times per growing season. Owner shall maintain his Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Hilltop Farms.

Failure to comply shall warrant the Declarant, the appropriate Governmental Authority of the Town of New Whiteland, or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

3.2 Residential Purpose. All Lots shall be used for residential purposes only, except that new homes may be used as a model for builder. No building shall be erected, altered, placed or permitted on any Lot other than a dwelling not to exceed two (2) stories in height. All dwellings shall:

3.2.1 have an attached garage of a size to accommodate at least two (2) automobiles;

and

3.2.2 be designed to provide a minimum of two (2) off street parking spaces.

3.3 Setback. No building shall be located on any Lot nearer to the front Lot lines than the minimum building setback dictated by the recorded Plat. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

3.4 Easements. Easements for installation and maintenance of public utilities and the Drainage System are reserved as shown on the recorded Plat.

3.5 Inoperative Parked Vehicles. At no time shall any unlicensed, inoperative motor vehicle be permitted on any Lot, Common Area, Street or Easement, unless kept entirely within a garage.

3.6 Trucks, Boats, Recreational Vehicles. No truck, larger than 3/4 ton, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar item shall be permitted to be kept on any Lot, unless entirely kept within a garage. Any oversized garages for such items may be permitted at the sole discretion of the ACC.

3.7 Nuisance. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

3.8 Outdoor Storage. No Owner shall be permitted to store large machinery or equipment shall be on any Lot except within the dwelling. Declarant or builder may be permitted to store large machinery or equipment on a Lot or Lots during the course of development.

3.9 Drainage Ditches. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the appropriate Governmental taxing authorities. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Town of New Whitland Engineering Department.

Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the appropriate Johnson County or taxing authorities may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for the immediate payment. Failure to pay will result in a lien against the property.

3.10 Signs. No sign of any kind shall be displayed to the public view on any Lot except one professionally manufactured sign of not more than five (5) square feet in area advertising the property for sale or rent.

3.11 Childcare Services. No pre-school, babysitting business or such childcare services shall be allowed to operate upon any Lot.

3.12 Mining Operations. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, miners, excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

3.13 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial use.

3.14 Rubbish, Trash And Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

3.15 Corner Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between Two (2) and Twelve (12) feet above roadways shall be placed or permitted on any corner Lot within the triangular area formed by the street property line and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersections of the street lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

3.16 Field Tiles. Any field tile or underground drain which is encountered in construction or any improvement within this subdivision shall be perpetuated, and all owners of Lots within this subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

3.17 Minimum Living Space. The minimum square footage of living space of dwellings within Hilltop Farms exclusive of porches, garages or basements shall be no less than:

- (a) 950 square feet for single story dwellings; and
- (b) 750 square feet for the first floor of two-story dwellings.

3.18 Outbuildings. Outbuildings such as storage or mini barns are permitted, but must conform to the style and character of the homes. The plan for such sheds or mini barns shall

have written approval by the Architectural Control Committee prior to construction. No structure of a temporary character trailer, tent, shack, garage, barn or other out-building shall be permitted on any Lot or used on any Lot at any time as a residence--either temporarily or permanently.

3.19 Driveways And Carports. All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. Carports are prohibited.

3.20 Communication Devices. Satellite dishes which are larger than twenty-four inches (24") in diameter, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited.

3.21 Wells And Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks are prohibited.

3.22 Swimming Pools. Above-ground swimming pools are prohibited.

3.23 Clothes Lines. Outdoor clothes lines or other such items are prohibited.

3.24 Flues. Any exposed fireplace flues must be masonry veneer or vinyl siding unless otherwise approved by the ACC.

3.25 Construction, Earth-Moving, Excavation. No significant construction, earth-moving, or excavating work of any nature may be conducted on any Lot without written approval of Architectural Control Committee.

3.26 Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to their construction. No such structures shall exceed six feet (6') in height, unless approved in writing by the Architectural Control Committee prior to construction. No such structure shall be placed closer to the front Lot line than the front building setback line. All chain-link fences must be vinyl covered.

3.27 Decorative Structures. No decorative structure, statue, or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

3.28 Mail Boxes. All mail boxes shall be installed by the home builder at the time of, or during, the construction on the Lot, and shall be of similar color, size, design and style as approved by the ACC.

3.29 Roof Pitch. All structures must have a minimum of a 4/12 pitch roof.

3.30 Basketball Goals. Basketball goals or such items must be placed behind a line determined by the extension of the front facade of the residence unless otherwise approved by the ACC.

3.31 Sidewalks. Sidewalks build in accordance with all applicable laws, ordinances, regulations and standards must be installed by the builder or owner at the time of initial construction upon the Lot.

3.32 Lake Lot Fences. Fences, hedge rows, shrubs, or other like structures may not exceed four feet (4') in height or obstruct the view of the ponds from the Street and from other Lots. Fences on Lake Lots, as permitted above, may not be placed closer to the rear Lot line than ten (10) feet.

4 ARCHITECTURAL CONTROL COMMITTEE

4.1 Appointment Of Architectural Control Committee. The Declarant shall appoint an Architectural Control Committee (ACC) to be composed of three (3) members. At such such time when the Declarant owns less than three (3) Lots, the Association shall appoint all members of the ACC.

4.2 Construction Approval. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Hilltop Farms until the plans and specifications, locations and plot plan thereof, showing all existing and proposed improvements on the Lot, including adequate provisions for landscaping, in detail and to scale, to the extent and in the form as may be required by the ACC, have been submitted to and approved by the ACC. The plans and specifications of and location of all construction shall be in compliance with the building, plumbing, and electrical requirements of all applicable regulatory codes, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate, Lot and/or such construction addition, alteration or improvement. Refusal of approval of plans and specifications, or location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the ACC.

4.3 The ACC shall approve or disapprove proposed improvements or alterations within ten (10) days after all required information shall have been submitted to it. Applicants must submit two (2) copies of all materials required by the ACC and one copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

4.4 Liability of Committee. Neither the ACC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto, or for any act it may or may not take in its discretion.

4.5 Inspection. The ACC may inspect work being performed with its permission to assure compliance with this Declaration.

5 COVENANTS FOR MAINTENANCE ASSESSMENTS

5.1 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within Hilltop Farms, as the same may be Platted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, and fencing, repairing, operating, and maintenance of the Common Amenities and Common Areas, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Property; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Amenities and Common Areas which are or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

5.1.1 A pro-rata share (as hereinafter defined) of the annual assessments fixed, established, and determined from time to time as hereinafter provided.

5.1.2 A pro-rata share (as hereinafter defined) of any special assessments fixed, established, and determined from time to time, as hereinafter provided.

5.2 Liability for Assessments. Each assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the assessment is due. 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 payments which become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

5.3 Pro-rata Share. The pro-rata share of each Owner for purposes of this Section 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat or Plats of Hilltop Farms, as the same may be recorded from time to time, that have been conveyed by the Declarant to an Owner ("Pro-Rata Share").

5.3.1 Beginning May 1, 2003, and concluding at the end of the first fiscal year, each Owner shall pay an Annual Assessment. The amount of the Annual Assessment for the first fiscal year shall be determined by the Declarant based upon a budget prepared by Declarant for the first fiscal year setting forth the anticipated Common Expenses. The Annual Assessment for the first fiscal year for each Lot shall be prorated for the balance of the first fiscal year. The Declarant shall be responsible for all Common Expenses which exceed the first fiscal year Annual Assessment fees paid by Owners. Declarant and/or any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale dwelling thereon (a "Builder") shall not pay an Annual Assessment so

long as any dwelling constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said dwelling Unit as a residence or leased to an individual or entity for use as a resident.

5.4 Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days prior to the beginning of each fiscal year of the Association.

5.5 Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessments.

5.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The Annual Assessments on each Lot in Hilltop Farms shall commence on the day on which Declarant first conveys ownership of the Lot to an Owner. The Annual Assessment for each year after the first fiscal year shall be due and payable on the first day of each fiscal year of the Association.

5.7 Duties of the Association.

5.7.1 The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner for duty authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the assessment to which such notice pertains, payment of such assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

5.7.2 The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which assessments have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any assessments therein stated to have been paid.

5.7.3 The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

5.8 Non-payment of Assessments: Remedies of Association.

5.8.1 If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such assessment becomes due.

5.8.2 If any assessment upon any Lot is not paid within fifteen (15) days after the due date, such assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the annual interest rate allowable on judgments rendered in the State of Indiana at the time such assessment is due, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

5.9 **Adjustments.** In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the assessment(s) due from each Owner for the next fiscal year(s).

6 ORGANIZATION AND DUTIES OF ASSOCIATION

6.1 Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation which have been filed or will be filed by Declarant.

6.2 Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Hilltop Farms as the same may be Platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class membership; or

(b) On January 1, 2018.

6.3 Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

6.4 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Amenities, Common Areas, and street signs, the determination of Common Expenses, the collection of annual and special assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

6.5 Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such actions provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns at least three (3) Lots within Hilltop Farms. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. No such amendment shall effect a modification of zoning covenants or commitments undertaken in connection with any rezoning without the prior approval of the New Whiteland Plan Commission.

6.6 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Amenities and Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Amenities and Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all Lots in Hilltop Farms, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

6.7 Condemnation, Destruction. In the event that any of the Common Amenities and/or Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Amenities and/or Common Areas; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

6.8 Lake Area. Usage of Lake Lots is restricted to Lake Lot Owners. Access to any lake area, if any, that is a part of the Common Area owned by the Association is restricted for the purpose of maintenance. No individual using a Lake has the right to cross another Lot or trespass upon the shoreline within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which would result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. Any Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Association Board of Directors in writing and allowed by law. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

6.9 Development and Sale Period. Nothing contained in this paragraph shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots, such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

6.10 Mortgagees' Rights. The mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge

against the Common Area, to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgages making such payment shall be owed immediate reimbursement therefor from the Association.

7 EXPANSION OF SUBDIVISION

7.1 Method and Scope of Expansion. Declarant, at its option, and from time to time, may expand Hilltop Farms to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one or more Lots and any Common Area which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a Plat of such section, consistent in detail and layout with Plats of sections previously recorded, and by the recordation of a supplemental declaration imposing upon such section the terms and conditions of this Declaration, together with any provisions particular to such section. Declarant hereby covenants that the total number of Lots in Hilltop Farms shall not exceed one hundred fifty-four (154) and that no real estate shall be added thereto which is not within that described in Exhibit B.

7.2 Time for Expansion. No additional sections shall be added after the date which is twenty-five (25) years after the date on which the first Plat for Hilltop Farms was recorded.

8 GENERAL PROVISIONS

8.1 Covenants Run With the Land. The Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

8.2 Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, covenants, conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant, the Town of New Whiteland, and each Owner shall be entitled, but not obligated, to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

8.3 Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration, or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

8.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, the Town of New Whiteland, or any Owner to enforce any term, covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, covenant or condition.

8.5 Rights of Mortgagees. Except to the extent otherwise provided in Section 5, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. The provisions of Section 7 hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

8.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

8.7 Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

8.8 Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to in Section 5; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

8.9 Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns fewer than three (3) Lots within Hilltop Farms.

8.10 Deed Clauses to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants and Restrictions for Hilltop Farms pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana", and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

8.11 Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

8.12 Reservations of Declarant. The provisions of Section 6 hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least three (3) Lots within Hilltop Farms without the approval or consent of the Owners or Mortgagees of the Lots provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

8.13 Rights in Common Amenities. Title to all Common Amenities and Common Areas shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, the right to the use of all Common Amenities and Common Areas as open spaces and the right of access to and use of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lots provided, however, that no Owner's use of any Common Area shall materially interfere with any other Owner's use thereof. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

8.14 Transfer of Control of Owner's Association and Quitclaim Deed of Common Amenities. Declarant shall transfer control of the Association to the Lot Owners and give a Quitclaim Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) fifteen (15) years after the first Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

THOMAS & THOMAS DEVELOPERS, INC.

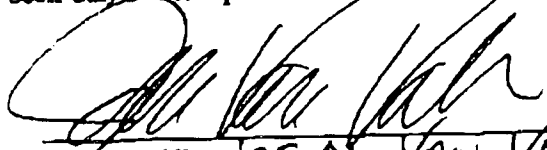
By: Norman R. Thomas, Pres.
Norman R. Thomas, President

STATE OF INDIANA)
) SS:
 COUNTY OF JOHNSON)

Before me, a Notary Public in and for said County and State, personally appeared **Norman R. Thomas**, President of **Thomas & Thomas Developers, Inc.**, who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath stated that the representations therein contained are true.

My Commission Expires:

6/25/07


 Notary Public JOE N. VAN VALER
 Resident of JOHNSON County, IN

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THIS INSTRUMENT PREPARED BY:
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 Greenwood, Indiana 46142.
 317/881-7575