

40-

16

Recorded Johnson County, Indiana  
Sue Anne Misiniec, Recorder  
Date 02/18/2003 Time 15:36:13 1 of 16 Pgs  
Inst # 2003-007076 OFF

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**HILLTOP COMMONS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HILLTOP COMMONS ("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 owner of certain real estate located in Johnson County, Indiana, more particularly described and shown on the plat recorded in the Office of the Recorder of Johnson County, Indiana ("Real Estate"); and

**WHEREAS**, Declarant intends to subdivide Real Estate into single-family residences with not more than two (2) units per dwelling structure and not more than forty-four (44) total units as generally shown on the Plat for Hilltop Commons; and

**WHEREAS**, Declarant intends to develop the Real Estate, by constructing residential facilities, which development shall be known as "Hilltop Commons"; and

**WHEREAS**, the Real Estate has been subdivided, platted and recorded by Declarant as the Hilltop Commons on the 18th day of Feb, 2003, as Instrument No. 2003-007076 in the Office of the Recorder of Johnson County, Indiana, in Plat Book D Page 444A13 and

**WHEREAS**, Declarant intends to sell and convey the residential facilities and Lots within Hilltop Commons and desires to subject the Real Estate to certain terms, covenants, conditions and restrictions ("Covenants") in order to ensure that 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; and

**WHEREAS**, Declarant desires to provide for maintenance of the Detention Ponds and appurtenances existing as a part of the Drainage System located on the Real Estate which is of common benefit to the Owners of the various Lots within said Hilltop Commons, 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 Commons;

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 terms, covenants, conditions and restrictions. 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, conditions, and restrictions ("Covenants") herein to ensure proper development of the Real Estate, to provide for adequate and proper maintenance of the Drainage System, Detention Ponds, and Common Area on the Real Estate, so as to meet the requirements of certain governmental agencies, all for the purpose of benefitting all Lots within Hilltop Commons and to ensure desired high standards of maintenance of the Real Estate.

**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.** The Architectural Control Committee, or "ACC," means the Architectural Control Committee for Hilltop Commons to be appointed in accordance with 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 Commons Homeowners' Association, Inc., a nonprofit 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 Area.** "Common Area" means the area shown as Common Area on the Plat of Hilltop Commons.

**2.6 Common Expense.** "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Detention Ponds, Drainage System, and Common Area and any other cost or expense incurred

by the Association for the benefit and perpetuation of the Drainage System and Common Area.

2.7 **Covenants.** "Covenants" means those covenants, conditions and restrictions affecting the Real Estate as established by Declarant in this Declaration.

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 Commons.

2.9 **Hilltop Commons.** "Hilltop Commons" means the Real Estate as it has been platted and recorded by Declarant in accordance with the provisions of this Declaration.

2.10 **Detention Pond.** "Detention Pond" means the real property and improvements thereon, shown and designated on the Plat as Detention Ponds.

2.11 **Drainage Easements.** "Drainage Easements" refer to those areas (referenced S.S. D & U.E., D. & U.E., and VAR. D. & U.E.) reserved as easements for drainage, the Detention Ponds, or for access to the Detention Ponds or other drainage facilities as shown on the Plat of Hilltop Commons.

2.12 **Drainage System.** "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, the Detention Ponds and Drainage Easement areas, and/or all structures, fixtures, properties, equipment and facilities located in, upon, or under the Drainage Easements or Streets and associated with or related to the drainage of surface and subsurface waters from, over, and across Hilltop Commons.

2.13 **Lot.** "Lot" means the tract of each parcel numbered and identified on the Plat of Hilltop Commons, which parcel shall be divided in two (2) tracts, with each tract being considered a Lot.

2.14 **Mortgagee.** "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.15 **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.

2.16 **Plat.** "Plat" means the final Plat or Plats of Hilltop Commons recorded in the Office of the Recorder of Johnson County, Indiana.

2.17 **Residential Unit.** "Residential Unit" means an attached single-family dwelling which shares a common wall with a single-family dwelling on the same Lot.

2.18 **Streets.** "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of Hilltop Commons, 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.

### 3 **GENERAL LOT DEVELOPMENT AND USE RESTRICTIONS**

3.1 **Lot Division.** Each parcel shall be divided into two (2) Lots and each Lot shall be conveyed as a separately designated legally described freehold estate, subject to the terms, conditions, and provisions in these Covenants set forth. The Lots shall be delineated and described as a metes and bounds part of the Lot of which it is a part, done at such time as the Residential Units are complete enough to establish the relationship of the common wall to the Lot's perimeter.

3.2 **Residential Use.** No Lot shall be used except for residential purposes and no building shall be erected, altered, or placed on any Lot, other than one (1) attached Residential Unit not to exceed two stories in height with a private attached garage for not less than one (1) car or more than two (2) cars.

3.3 **Minimum Floor Area.** No Residential Unit shall be less than Nine Hundred Fifty (950) square feet of living space for a one-story Unit. A two-story Unit shall have a minimum of One Thousand (1,000) square feet for the first floor.

3.4 **Set-Back Requirements.** There shall be a minimum of twenty feet (20'), at the nearest points, separating all dwelling structures, which shall consist of not more than two (2) Residential Units per dwelling structure.

3.5 **Common Wall.** Lots are reserved for attached single-family residential use and will have erected thereon two (2) Residential Units which share a Common Wall. Such Common Wall comprises a part of the common tract lines between each Lot. Each Common Wall, which is built as part of the original construction and connects two (2) Lots, shall constitute a Common Wall or party wall, and to the extent not inconsistent with the provisions of these Covenants, the general rules of law regarding common walls or party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3.6 **Common Wall Maintenance.** Adjoining Lot Owners shall have the right in the Common Wall for maintenance purposes.

3.7 **Trash Disposal.** All builders shall provide for the trash generated during construction by means of a dumpster, preferably maintained by a commercial trash disposal company. Failure to provide for such trash may cause the Architectural Control Committee to provide for such cleaning and disposal. If the Architectural Control Committee provides for the cleaning and disposal, the builder will be billed for this service. This shall be at the sole discretion of the Architectural Control Committee.

**3.8 Construction Period.** Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any Residential Unit upon any Lot shall be completed within one (1) year after the date of commencement of the building process, after which time, the building committee may reenter, take possession of said Lot, without notice, sell the same together with improvements; and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of said Lot at the time of sale.

**3.9 Exterior Construction.** The front facade of the residential dwelling, exclusive of roofs, gables, dormers, eaves, overhangs, porches and trim, shall be constructed of brick.

**3.10 Offensive Activity.** Noxious or offensive activity shall not be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**3.11 Accessory Buildings.** Accessory buildings such as storage or mini barns are not permitted. 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.

**3.12 Swimming Pools.** No above ground swimming pools shall be permitted within the subdivision. Any pool, pool house, or fencing for a pool shall have a written approval of the Architectural Control Committee.

**3.13 Signs.** No sign of any kind shall be displayed to the public view on any Lot, except signs used by a Builder, Realtor, or Owner to advertise the property during the construction and sale period.

**3.14 Mining Operations.** No oil drillings, oil development operations, oil refining, quarries, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral 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 on any Lot. All gas and oil tanks must be concealed.

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

**3.16 Trash.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage.

**3.17 Satellite Dishes.** Antennas, satellite dishes over eighteen (18) inches in size, masts, or towers of any kind will not be permitted on any Lot or outside any dwelling.

**3.18 Siteline Obstructions.** No fence, wall, hedge, or shrub planting which obstructs the sitelines at elevations greater than two (2) feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street row lines and a line connecting them at points thirty-five (35) feet from the intersection of the street row lines, or in the case of rounded property corner, for the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement.

**3.19 Recreational Facilities.** Each Lot shall be kept in a neat and pleasing manner. All basketball backboards and other fixed games and play structures shall be located behind the front foundation line of the main structure and within the Lot setback line. It is the intention of these restrictions to assure that Lots and surroundings present a park-like appearance.

**3.20 Unimproved Lots.** Lots and yards shall be kept mowed regardless of whether a dwelling has been constructed on the Lot. Owners of Lots without Residential Units shall be held responsible for the trash, weeds, and general condition of the Lots.

**3.21 Water and Sewer Systems.** No individual water supply system or sewage system, except those existing at the time of the execution of these Declarations, shall be permitted on any Lot, except for Geo-Thermal heating systems.

**3.22 Inoperative or Unlicensed Vehicles.** Any motor vehicle which is inoperative or unlicensed and not being used for normal transportation will not be permitted to remain on any Lot. Campers, recreational vehicles, or boats of any kind may not be stored or parked on any Lot outside the main dwelling or garage.

**3.23 Enforcement.** Violation of any of the covenants or restrictions of this Plat or of those contained in the Declaration of Covenants and Restrictions for the Hilltop Commons Association, referenced herein, shall be subject to liquidated damages in the sum of Fifty Dollars (\$50.00) per day for each day the violation continues and to all other remedies, including injunction, provided by law or in equity and all costs and expenses incurred by the Declarant or property owners, including attorneys fees, in litigation or other procedures required to remedy such violations shall be paid by the Owners(s) of the Lot or Lots found to be in violation. By acceptance of a deed for title to any Lot within this Plat, the grantee acknowledges the provisions of this document and agrees to be bound thereby and to pay the costs and expenses described in this paragraph where applicable. The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of the law, of any structure or part thereof, is hereby dedicated to the public and reserved to the several Owners of the several Lots in this subdivision and to their heirs and assigns. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenants shall not be considered as a waiver of the right to enforce any covenant thereafter.

#### 4 HILLTOP COMMONS ARCHITECTURAL CONTROL COMMITTEE

4.1 Architectural Control Committee (ACC). The Board of Directors of the Association, or Declarant, so long as Declarant owns more than six (6) Lots, shall appoint an Architectural Control Committee to be composed of three (3) members.

4.2 Construction Approvals. No construction of any building or structure of any kind, including additions or remodeling involving exterior changes, alterations, fences, screens and walls shall begin within Hilltop Commons until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location, and plot plan by Architectural Control Committee may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee.

The plans and specifications submitted to the ACC shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit. The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of Hilltop Commons area shall be the proper concern of the ACC.

4.3 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. 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. Neither the ACC members nor the designated representatives shall be entitled to compensation for services performed pursuant to this Declaration.

4.4 Liability of Committee. Neither the Committee 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.

4.5 Inspection. The ACC or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

4.6 ACC Approval Procedure. The Architectural Control Committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fails to approve or disapprove the plans as required herein within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the

construction has commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

## **5 DRAINAGE SYSTEM/DETENTION POND RESTRICTIONS.**

**5.1 Detention Pond Use.** Recreational use of the Detention Ponds is prohibited. The Detention Ponds are to be used for storm water detention and drainage purposes only. Docks and similar structures are prohibited on any portion of the Lots or Detention Ponds.

**5.2 Interference with Detention Ponds.** No Owner or third party shall do or permit another to do any act which could result in pollution of Detention Ponds, diversion of any water, raise or lower the elevation of the water, significantly disturb the earth or the embankment of a Detention Pond, or any other conduct which could result in an adverse effect upon the water quality, embankment, and adjacent property, drainage, or any other general condition of the Detention Pond. Pumping water from the Detention Ponds is specifically prohibited.

**5.3 Enforcement of Detention Pond Restrictions.** Any Owner, the Association, or the appropriate governmental authorities at their discretion, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Detention Ponds, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorneys' fees.

**5.4 Drainage Systems.** 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 authorities. 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 appropriate governmental authorities. Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, the appropriate governmental authorities may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected Owner for immediate payment. Failure to pay will result in a lien against the Owner's Lot.

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

**5.6 Outdoor Storage.** No vehicles, boats, materials, machinery, equipment or other such items shall be permitted to be kept or stored within the Drainage Easements.

5.7 **Improvements or Outbuildings.** No improvements or outbuildings of any kind, including detached garages, sheds, barns, storage buildings, shacks, or tents shall be permitted within the Drainage Easement.

5.8 **Construction, Earth-Moving, Excavation.** No significant construction, earth-moving, or excavating work of any nature may be conducted by Owner within the Drainage Easements.

5.9 **Easement to Association.** Declarant hereby grants a non-exclusive easement in favor of the Association for the maintenance of the Drainage System/Detention Ponds (including, but not limited to, Owner's lawns). Said easement shall permit the Board or its agents to enter onto any lot to maintain; to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the Drainage System/Detention Ponds.

## 6 **COVENANTS FOR MAINTENANCE ASSESSMENTS**

6.1 **Assessments for Drainage System/Detention Ponds.** The Assessments levied by the Association shall be used for the purpose of maintenance, repairs, and upkeep of the Detention Ponds, Drainage Easements and appurtenances existing as a part of the Drainage System within Hilltop Commons, including, but not limited to, the payment of any necessary insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Drainage System; provided that the Association shall not be responsible for the replacement, repair or maintenance of any part of the Drainage System which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

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

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

6.2 **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.

6.3 **Pro-rata Share.** The pro-rata share of each Owner for purposes of this

section shall be the percentage obtained by dividing one by the total number of Lots of Hilltop Commons ("Pro-Rata Share"). 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.

**6.4 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 Maintenance 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 to the beginning of each fiscal year of the Association.

**6.5 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 Maintenance 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 Maintenance 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 Maintenance Expense not provided for by the annual Assessments.

**6.6 First Fiscal Year.** Beginning May 1, 2003, and concluding at the end of the first fiscal year, each Owner shall pay an Annual Assessment. The first Annual Assessment for each Lot shall be prorated for the balance of the first fiscal year. 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 maintenance expenses. The first fiscal year Annual Assessment shall be prorated by the month in which each Owner closes. The Declarant shall be responsible for all Common Expenses which exceed the first fiscal year Annual Assessment fees paid by Owners.

**6.7 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 provided for herein shall commence as to all Lots in Hilltop Commons on the first day of the month following the Declarant's transfer of control of the Association to the Owners. 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.

**6.8 Duties of the Association.**

**6.8.1** 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 or duly 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.

**6.8.2** 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.

**6.8.3** 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 of the Association or this Declaration which is not cured within sixty (60) days.

**6.9 Non-payment of Assessments; Remedies of Association.**

**6.9.1** 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.

**6.9.2** 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.

**6.10 Adjustments.** In the event that the amounts actually expended by the Association for Maintenance Expenses in any fiscal year exceed the amounts budgeted and assessed for Maintenance 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 Maintenance Expenses in any fiscal year exceed the amount actually expended by the Association for Maintenance 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).

## **7 ORGANIZATION AND DUTIES OF ASSOCIATION**

**7.1 Organization of Association.** The Declarant shall establish the Association to be organized as a mutual benefit and nonprofit 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.

**7.2 Membership.** The members of the Association shall consist of the Declarant and the Owners of Lots in Hilltop Commons, 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.

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

**7.4 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 Drainage System, Detention Ponds, Common Area, the determination of Maintenance Expenses, and the collection of annual and special Assessments for the perpetuation of the Drainage System, Detention Ponds, and Common Area and 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.

**7.5 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 not bring about any inequitable Assessments on any particular Owner(s). 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 substantially alter the Drainage System or Detention Ponds or effect a modification of any covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

7.6 **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 the Drainage System, Detention Ponds, and/or Common Area. The Association shall also maintain in force adequate casualty and extended coverage insurance, insuring the Drainage System, Detention Ponds, and Common Area against casualty, 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 Drainage System, Detention Ponds, and/or 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 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 Commons, 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.

7.7 **Condemnation; Destruction.** In the event that any of the Drainage System, Detention Ponds, and/or Common Area 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 part of the Drainage System, Detention Ponds, and/or 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 Drainage System, Detention Ponds, and/or 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 Drainage System, Detention Ponds, and/or Common Area; 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 part of the Drainage System, Detention Ponds, and/or Common Area.

**7.8 Mortgagees' Rights.** The mortgagees shall have the right, at their option, jointly or severally, to pay charges which are in default or which may or have become a charge against the Drainage System, Detention Ponds, and/or Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Drainage System, Detention Ponds, and/or Common Area and Mortgagees making such payment shall be owed immediate reimbursement from the Association.

## **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, 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 herein, 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. Other provisions herein 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 hereinabove; or (b) seventy-two (72) 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 Deed Clause 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 Covenants For Hilltop Commons Drainage System, Detention Ponds, and Common Area 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.

**8.10 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.

**8.11 Reservations of Declarant.** Other provisions herein 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 six (6) Lots within Hilltop Commons 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.

**8.12 Transfer of Control of Owner's Association.** Declarant shall transfer control of the Owner's Association to the Owners no later than the earlier of (a) four months after twelve (12) of the Lots have been conveyed to Lot purchasers or (b) twenty (20) 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.**  
an Indiana Corporation

*Norman T. Thomas, Pres.*  
\_\_\_\_\_  
Norman T. Thomas, President

STATE OF INDIANA        )  
                                  )        SS:  
COUNTY OF JOHNSON    )

On this 21 day of Feb, 2003, before me, a Notary Public, personally appeared **Norman R. Thomas, President**, on behalf of **Thomas & Thomas Developers, Inc.**, an Indiana Corporation, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that she executed the same.

My Commission Expires:

2/25/07

*Joe A. Van Valen*  
\_\_\_\_\_  
Notary Public, JOE A. VAN VALEN  
Resident of JOHNSON County, IN

THIS INSTRUMENT PREPARED BY:  
Joyce A. Nies, Attorney,  
VAN VALER LAW FIRM,  
299 West Main Street, P.O. Box 7575,  
Greenwood, Indiana 46142.  
317/881-7575