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RECORDER

VANDERBURGH COUNTY

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2009R00014417

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RECORDING FEES: \$77.00

PAGES: 26

**CONDITIONS, RESTRICTIONS, RESERVATIONS
AND PROTECTIVE COVENANTS
OF HAMILTON CREEK**

As of this 3rd day of June, 2009, **Esquire Properties, LLC**, an Indiana limited liability company ("Developer"); **Edwina L. Kempf**, by Bruce Miller, her Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023644; **Carolyn S. Messmer**, as Trustee of the Carolyn S. Messmer Trust u/a dated May 26, 2000, by Bruce Miller, her Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023647; **John M. O'Day** and **Susan J. O'Day**, by Bruce Miller, their Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023646; **Randall M. Schulz** and **Ann E. Schulz**, by Bruce Miller, their Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023649; **Peter L. Stevenson** and **Patti Stevenson**, by Bruce Miller, their Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023645; **Betty C. Van Zant**; **Carlton P. Williams** and **Carolyn V. Williams**, by Bruce Miller, their Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023648; and **Nicholas C. Wolf II**, as Trustee of the Nicholas C. Wolf, II Revocable Trust Agreement dated March 14, 1997, by Bruce Miller, his Attorney-in-fact pursuant to a Limited Power of Attorney recorded September 5, 2008 as Instrument No. 2008R00023650, all such Limited Powers of Attorney recorded in the Office of the Recorder of Vanderburgh County, Indiana (all of the foregoing collectively referred to as the "Owners" and all Owners other than Developer collectively referred to as the "Condominium Owners"), being the owners of that certain real property in Vanderburgh County consisting of 25.04 acres, more or less, and more particularly described in Exhibit A attached hereto and made a part hereof ("Subdivision"), the first phase of which is subdivided by the plat of Hamilton Creek, Section A, recorded June 3, 2009, in Plat Book S, Page 136, in the Office of the Recorder of Vanderburgh County, do hereby make, adopt and establish these Conditions, Restrictions, Reservations and Protective Covenants ("Covenants") for the use and occupancy of the real property situated within the boundaries of the Subdivision, which Covenants shall run with the title to said real estate and shall be binding upon all owners of the real property within the boundaries of the Subdivision, to-wit:

1. **EFFECTIVE DATE.** The effective date of these Covenants shall be upon the later of: (i) the execution hereof by Developer and the recording of the same; or (ii) recording of the final plat of Hamilton Creek Subdivision, Section A, covering the real property more fully described in Exhibit B attached hereto.

2. **HAMILTON CREEK CONDOMINIUM; GRANDFATHERED COMPLIANCE.** Upon 8.15 acres, more or less, which is more particularly described in Exhibit C attached hereto and made a part hereof ("Condominium Property") of the real property

comprising the Subdivision, there is located a condominium ("Condominium") created pursuant to that certain Declaration of Condominium Ownership of Hamilton Creek Planned Community recorded November 27, 2000 as Instrument No. 2000R00034555, in the Office of the Recorder of Vanderburgh County, Indiana, as subsequently amended and supplemented ("Declaration"). Each of the lots depicted in the recorded plat of any portion or phase of the Subdivision shall be referred to as a "Home Site," whether such lot is vacant or whether any improvements have been constructed thereon, and whether or not the depicted lot is located in the portion of the Subdivision referred to herein as the Condominium Property. That portion of the Subdivision other than the Condominium Property shall be referred to as the "Developer Property." Each of the Condominium Owners hereby enters into these Covenants in their individual capacities, as well as members of the association of owners of the Condominium ("Condominium Association").

The Home Sites located within the Condominium Property, and any and all improvements of any kind existing on such Home Sites as of the date of these Covenants, shall be deemed to be in compliance with the provision of Sections 4, 6 and 7 of these Covenants, whether or not such Home Sites or improvements are actually in compliance with all provisions of such Sections.

The Condominium Owners have, by separate agreement with Developer, agreed to terminate the Condominium. The Owners agree that, until such time as the Condominium is terminated, the insurance and maintenance of the Condominium Property (other than the interior roadways) and all improvements thereon shall be the responsibility of the Condominium Owners and/or the Condominium Association, in accordance with the Declaration. The Owners further agree that, following the termination of the Condominium, the insurance and maintenance of the Common Areas of the subdivision as defined herein, shall be the responsibility of the Property Owners' Association, in accordance with the terms of these Covenants. The owners further agree that, until the acceptance for maintenance by Vanderburgh County of the interior roadways within the Subdivision, such maintenance shall be the responsibility of Developer.

3. [reserved]

4. CONSTRUCTION OF BUILDINGS. Every dwelling (exclusive of porch, breezeway, garage and basement,) must contain not less than the following living area on the floor or floors indicated:

One (1) story dwelling

At least 2,200 square feet; and

One and one-half (1-1/2) story or
two (2) story or two and one-half
(2-1/2) story dwelling

At least 3,000 square feet of living
area.

No dwelling shall be erected within the Subdivision which does not meet the following additional requirements. The exterior finish must be composed of brick or stucco-like material. Aluminum wood or vinyl clad cannot compose more than 20% of the exterior finish. Each residence shall include a garage of the "attached" type, constructed in such a manner as to be an

integral part of the residential structure on the Home Site. Such garages shall be sufficient to accommodate not less than two (2), nor more than four (4) automobiles. All garages constructed in the Subdivision shall be of the "enclosed" type, and no carports shall be permitted to be constructed in the Subdivision. The roof pitch of every dwelling must not be less than eight (8) inches vertical for every twelve (12) inches horizontal. No completed structure shall have concrete blocks exposed on the exterior of said structure.

5. CONSTRUCTION PROCESS. The construction of the dwelling, together with landscaping, shall be completed within one (1) year from the date of commencement of such construction of said dwelling. Each owner shall require his builder or contractor to confine all building materials, equipment and excavated soil within the boundaries of the owner's Home Site and to exercise good erosion control practices. Straw bale dams, silt fencing or other acceptable materials are to be used for runoff control during construction, if necessary, and all streets shall be kept free of transported soil. The Home Site and street in front of the Home Site shall be kept clean and free of debris at all times. Within a reasonable time after the completion of construction, the Home Site shall be graded, seeded and mulched and a good turf shall be established and thereafter maintained.

6. ARCHITECTURAL COMMITTEE. All construction and related activity in the Subdivision shall be subject to the prior approval of the Architectural Committee ("Committee"). Those individuals designated, from time to time, by Developer shall constitute the members of the Committee until the date when the Developer no longer owns any of the real estate comprising the Subdivision or such earlier date as the Developer designates in writing that he has elected to relinquish control of the Subdivision to the Home Site owners (the applicable date hereinafter referred to as the "Turnover Date"). Following the Turnover Date, the Committee shall thereafter be composed of three (3) members, each of whom must be an owner of a Home Site in the Subdivision and who shall be chosen by the Board of Directors of the Association, to serve staggered one (1)-year terms. The Committee so chosen may act by majority vote of its members and/or may act through a representative or representatives designated by a majority of the members of the Committee and authorized by said Committee to exercise some or all of the powers of the Committee herein set forth.

The powers and duties of the Committee and/or its designated successors or representatives shall cease twenty-five (25) years following the date of the recording of these Covenants, unless prior to said date, these Covenants are duly amended to extend the existence of such Committee.

No building, structure or appurtenance, including, but not limited to, any residence, garage, porch, breezeway, fence, driveway, wall, patio, pool house, satellite dish antenna, solar collector or other similar structure or appurtenance, shall be commenced, constructed, or erected, placed or altered on any Home Site in the Subdivision until complete construction plans and specifications for all such construction or alteration ("Plans") are approved by the Committee. The required Plans submitted to the Committee shall include, but shall not be limited to, an accurate architectural drawing of the exterior design of each proposed building or structure and a plot plan showing the proposed location of each building or structure and the proposed final topography of the Home Site, with finished grade elevations. No outbuildings are allowed

within the Subdivision, with the exception of pool houses and those constructed on Common Areas prior to the date of these Covenants or those constructed on Common Areas by the Developer or the Property Owners' Association. Any deviation from any building or construction requirements or limitations set forth in these Covenants, including but not limited to Sections 4, 5, 10, 14, 15, 16 and 17, must be reviewed and approved in writing, in advance, by the Committee.

The Committee shall have the right to refuse to approve any Plans which are not suitable or desirable, in its sole judgment and discretion, for aesthetic or other reasons, and in making such determination the Committee may consider, among other things: the harmony of the proposed exterior design with the intended architectural character of the Subdivision and with existing structures within the Subdivision; the location of each structure upon the Home Site; the proposed final topography; the elevation of each structure; the exterior materials to be used in construction; the general quality of construction and design; the approximate cost of the structure and improvements; and compliance with all applicable covenants and restrictions. While the Committee shall have the right to apply such standards subjectively, approval of submitted Plans shall not be arbitrarily or unreasonably withheld by the Committee.

In the event the Committee or its designated representative shall fail to approve or disapprove any such Plans within forty-five (45) days after all required documents and information have been submitted to the Committee and a written receipt therefore executed by a member of the Committee or its representative, such Plans shall be deemed to have been fully compliant with these Covenants and approved by the Committee. In the event any such Plans are disapproved in whole or in part by the Committee, the Committee shall notify the submitting party in writing as to the reasons for such disapproval. If complete Plans, after modification, are resubmitted to the Committee for final approval, the Committee shall approve or disapprove such modified Plans within thirty (30) days after receipt thereof, and in the event of the failure of the Committee so to act within said thirty (30)-day period, said modified Plans shall be deemed to have been approved as modified.

The Committee shall have the right to make on-site inspection of any and all structures during the construction period. If any construction or alteration is in any manner at variance with the Plans as approved by the Committee, the Committee may, at its option, halt such construction or alteration until the same is brought into compliance with the approved Plans.

7. BUILDING LINES, LOT COVERAGE. No residence, building, structure or other permanent improvement shall be constructed nearer to the front property line of any Home Site than twenty (20) feet, nor nearer to any side property line of any Home Site than eight (8) feet or, ten (10) feet in the case of a side property line which abuts a street on a corner Home Site. Notwithstanding the foregoing, in the case of a residence constructed upon more than one (1) Home Site, there shall be no setback requirements applicable to the property line dividing the two (2) original Home Sites. Notwithstanding anything to the contrary herein, all construction performed at any time upon any Home Site shall be in conformity with all applicable zoning and land use statutes, ordinances and regulations in effect at the time of such construction. However, in the event any requirements set forth in these Covenants are more restrictive than the

requirements set forth under the applicable zoning codes, the requirements of these Covenants shall apply.

8. EASEMENTS. Public utility easements are reserved in the Subdivision for the erection, construction, maintenance and use of sewer, drain, gas, water, cable TV, telephone, electrical and any other similar or like utilities, and certain easements designated for surface water drainage. Such easements are located upon the Home Site at the locations and are the widths as more particularly shown on the recorded plat of the Subdivision. No building, structure, planting or other obstruction shall be placed on or within or be permitted to remain on or within any such easement, which may damage or interfere with the installation and maintenance of utility facilities or which may change the direction of or obstruct or retard the flow of surface water through the drainage channels in the easements or which shall otherwise be in violation of the express written terms of any such easement. Each such easement area shall be kept clean and maintained continuously by the owner of each Home Site upon which any such easement is located.

9. USE, APPEARANCE OF LOTS. All the real estate in the Subdivision shall be known and described as and used only for residential purposes and shall not be used for any business, commercial or industrial purposes or utilized for vehicular access to adjoining property. Each Home Site shall be kept clean and free of weeds, high grass and other objectionable matter at all times by the owner thereof. In the event any Home Site is not kept and maintained in an orderly manner by the owner, the Property Owners' Association or (until the Turnover Date) the Developer shall have the right to cause such maintenance to be performed at the expense of the owner of Home Site, and such owner shall be required to reimburse the Developer, the Committee or the Property Owners' Association, as the case may be, for the costs incurred in connection with such maintenance within ten (10) days from the date such owner is presented with a statement for the cost of such work, which statement shall be payable with interest at the rate of fifteen percent (15%) per annum until paid and with attorneys' fees.

10. NO TEMPORARY STRUCTURES. No temporary structure, such as a trailer, mobile home, garage, tent, shack, barn or other building shall be built, erected or placed upon any lot for use as a residence, either temporarily or permanently. The initial structure to be constructed upon any Home Site shall be the principal residence and shall not be occupied or inhabited until such residential structure shall have been substantially completed in accordance with the Plans as approved by the Committee.

11. SANITARY SEWER. All residential structures are required to tap into the municipal sewage system. The sewer system constructed in the Subdivision is a sanitary sewer only. No residence or other permitted structure may have any plumbing located in its basement or any below ground level floor connected by gravity to the sanitary sewer. No surface water, wall perimeter tile drainage or down spout drainage may be directed to the sanitary sewer.

12. DRAINAGE, DOWN SPOUTS. The existing natural drainage courses and man-made drainage facilities in the Subdivision shall not be altered. It shall be the obligation of the owner of each Home Site to keep and maintain a natural or man-made drainage course or facility located on such Home Site clean, open and unobstructed. Any down spout or foundation

drainage, if drained to the street, must be discharged at a level above the guttering and must not be discharged in a manner which could cause erosion under the gutter or street. All such water so discharged shall be rain or subterranean water only, and may not contain laundry water or overflow waste effluents.

13. STREET LIGHTING. Developer may, but shall not be obligated to, locate street lamps in the front yards of Home Sites selected by Developer.

14. POSTAL BOX. The Committee will approve the type and style of all mail/newspaper boxes to be used, with the goal of uniformity of materials within the Subdivision and giving preference to brick or other high quality, attractive materials.

15. FENCES, WALLS, SHRUBS AND TREES. Fences and walls are discouraged in the Subdivision and required prior approval by the Committee of the specifications, location and materials of the same. The Committee will consider requests to construct fences or walls on a Home Site which are in harmony with the architectural character of the Subdivision and are constructed of high quality materials such as brick and/or wrought iron. Notwithstanding the foregoing, the following limitations may not be waived by the Committee. No fence or wall shall exceed six (6) feet in height or shall be erected on any Home Site nearer to the street than the rear wall of the dwelling. On corner Home Sites which have the rear yard lying along any interior street of the Subdivision, fences may not be constructed closer than fifteen (15) feet from the back edge of the curb. No fences shall be permitted along the southern boundary of those lots that abut Petersburg Road or other lot lines that abut Petersburg Road. No chain-link fences will be permitted. No fences or walls shall be permitted on Home Sites that border the lake or the waterfall.

Trees, shrubs and other plantings shall be planted and maintained in such manner as not to create a traffic safety hazard or distract from the appearance of the Subdivision. Landscaping along the southern boundary of those Home Sites that abut Petersburg Road must be approved by the Committee. The Committee has the right to require an owner who has constructed a home on a Home Site abutting Petersburg Road to landscape the southern side of the home to maintain a "privacy buffer" for the Subdivision.

16. DRIVEWAYS. All driveways, walks and patios for their entire length and width shall be paved with poured concrete, brick or aggregate from the street right-of-way to the garage.

17. AIR CONDITIONING UNITS. All air conditioning units, heat pumps or other similar facilities shall be located or screened by landscaping so as not to be visible from the street.

18. PARKING OF VEHICLES. No vehicles shall be regularly or habitually parked upon any street in the Subdivision. Each Home Site shall have adequate facilities for off-street parking for all vehicles regularly kept upon the premises. No trucks or commercial-type vehicles nor more than two (2) automobiles shall be regularly or habitually parked in the driveway of any Home Site. No camper, boat, motor home, recreational vehicle, commercial truck, inoperative

vehicles or other such vehicles shall be regularly or habitually parked upon any Home Site or premises in the Subdivision, unless parked within an enclosed garage.

19. **SIGNS.** No sign of any kind shall be displayed to the public view on any Home Site, except one (1) sign of not more than five (5) square feet in area when required for advertising the Home Site for sale. Each Home Site owner may display a marker marking only his name and address. Following the construction of the house, no sign or signs advertising products, services, professions or facilities shall be displayed on any Home Site at any time.

20. **NO ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Home Site, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Animal yards, quarters, or pens shall be blocked from the view of adjacent yards and/or streets.

21. **NUISANCES.** No noxious or offensive activities shall be carried on upon any Home Site in the Subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the residents of the Subdivision. No Home Site shall be used for the storage of any property or thing that will cause the Home Site to appear unclean or untidy, nor shall any substance, thing or material be kept upon any Home Site that will emit fire or obnoxious odors or that will cause any noise or other effect which would disturb the peace, quiet, comfort or serenity of any resident of the Subdivision. No oil drilling or refining, mining, quarrying or similar operations of any kind shall be permitted upon any Home Site in the Subdivision.

22. **FIREARMS.** There shall be no hunting with firearms or other weapons within the Subdivision. No firearms shall be discharged within the Subdivision.

23. **GARBAGE AND REFUSE DISPOSAL.** Each Home Site owner shall keep the Home Site free of garbage, sewage, ashes, rubbish, bottles, cans, waste matter and other refuse. Accumulated trash, garbage or other waste or debris shall be kept in sanitary containers out of sight and shall be disposed of in a timely manner. All containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be kept in such a manner as to avoid an unsightly appearance within the Subdivision.

24. **PROHIBITED APPURTENANCES.** Satellite dishes, antennas, solar collectors, and similar devices shall be prohibited, unless they are located and/or blocked so as not to be visible from the front of the Home Site and have been approved prior to construction or erection by the Committee as being in compliance with this Section 24. No clotheslines will be permitted.

25. **PROPERTY OWNERS' ASSOCIATION.** The Developer has organized, or shall hereafter organize, an Indiana non-profit corporation, to be known as "Hamilton Creek Property Owners' Association, Inc." The Association shall be referred to herein as the "Property Owners' Association" or "Association." The purpose of said Association shall be, among other things: oversight, insurance and maintenance of the lake, gazebo, waterfall, entry walls, street lights and any other Common Areas or facilities (with the exclusion of interior roadways); the

enforcement of the terms and provisions of these Covenants; the assessment and collection of the Common Area assessments; and such other purposes as may be from time to time authorized by the By-laws of the Association and/or the members thereof.

The term "Common Area" as used in these Covenants shall mean Outlots 1 - 5 as depicted on the plat(s) of the Subdivision, as well as any other portion of the real estate lying within the boundaries of the Subdivision (with the exclusion of interior roadways) which does not lie within the boundaries of a buildable, residential lot as depicted in the recorded plat of any portion or phase of the Subdivision, and all improvements constructed or located on such real estate. Any public utility and/or drainage easement or right of way and any unpaved portion of the street right-of-way lying within the boundary lines (and the extensions thereof) of any Home Site shall not be deemed to be a Common Area, and the care and maintenance of the same shall be the responsibility of the owner of such Home Site. The Association shall have the right, but not the obligation, to adopt rules and regulations ("Rules") governing the use of the Common Areas and limiting the use thereof to the Home Sites owners and their respective families, guests and invitees, which Rules shall, as to the Condominium Property, constitute the rules which may be adopted by the Condominium Owners pursuant to Article VI of the Declaration.

The Developer and all owners of Home Sites or unplatted land lying within the boundaries of the Subdivision shall automatically be members of the Association during their period of ownership and shall be subject to the terms and provisions of the Articles of Incorporation and by-laws of said Association and any rules, regulations, restrictions, obligations and assessments provided for therein and/or herein. Until the Turnover Date, the affairs of the Association shall be governed by a Board of Directors composed of three (3) persons appointed by the Developer. Thereafter, the Board of Directors shall be elected by the members of the Association, in accordance with the By-Laws of the Association.

The owner of each Home Site as originally platted in the Subdivision shall be entitled to one (1) vote with respect to any required or permitted action of the Association and with respect to a vote regarding the decision to form the corporation that is the Association. In the event a Home Site is owned by more than one individual or entity, such owners shall be entitled to only one (1) vote. In the event one (1) or more contiguous Home Sites, as originally platted, or parts thereof, are combined for use as the site of a single residence or are owned by the same owner(s), then the owner(s) of such combined or contiguous Home Sites shall be entitled to one (1) vote in all matters pertaining to the Association, it being the intent of these Covenants that the owner(s) of each site, or potential site, of a residence be entitled to one (1) vote in all matters pertaining to the Association. Ownership of a Home Site shall mean and refer to record ownership and legal title and shall not include a contract purchaser or life tenant. Notwithstanding the foregoing, the Developer shall be entitled to two (2) votes per each Home Site owned by the Developer. The Developer shall not be entitled to a vote relative to any portion of the Subdivision which is not yet platted.

26. COMMON COST ASSESSMENTS. The owner(s), other than the Developer, of each Home Site in the Subdivision shall be obligated for and shall be responsible to pay an equal share of the Common Costs (as hereinafter defined) in that proportion which such owner's voting rights with respect to Association matters bears to the total voting rights of all members of

said Association, as set forth in Section 25 above. So long as the Developer owns any Home Site(s) and/or unplatted real estate in the Subdivision, the Developer shall be assessed for payment of Common Costs as if the Developer had only one (1) vote with respect to Association matters, regardless of the voting provisions of Section 25 above. An owner's liability or obligation for such common expenses shall commence upon the date that such owner acquires title to any real estate in the Subdivision, regardless of whether or when such owner shall commence construction upon such real estate.

"Common Costs" shall include, but shall not be limited to, the cost and expense of: operation of the Association; oversight and maintenance of the Common Areas and facilities; utility expenses for interior lighting and operation of the water feature; any public utility and/or drainage easement or right of way (other than any portion of the same lying within the boundaries of a Home Site); enforcement of these Covenants; and such other costs and expenses as are determined by a majority vote of the Association to be Common Costs. An additional amount for general maintenance and upkeep of the lake can be assessed to the owners of those Home Sites, if any, which border the lake.

Any Common Costs assessed by the Property Owners' Association against any Home Site in the Subdivision shall constitute a lien upon said Home Site, enforceable pursuant to I.C. 32-28-14, with interest thereon at the rate of fifteen percent (15%) per annum, with reasonable attorneys' fees.

27. MISCELLANEOUS.

A. Due to the ground elevations and other lot conditions of Lots 14, 15, 25, 26 and 42, special measures, including but not limited to, waterproofing, installing sump pumps and yard slopes in excess of code minimums, are required to provide extra crawl space protection. These Lots will require a variance in order to obtain a building permit.

B. Outlots 1, 2, 3, 4 and 5 are non-buildable, unless they are combined with adjacent lots.

C. It is understood and consented to by all owners, tenants and other occupants of Home Sites that the Subdivision lies in proximity to an operating airport and that aircraft takeoff and landing may generate high noise levels.

D. All Home Sites and any other lots within the Subdivision shall access interior streets only.

28. ENFORCEMENT OF RESTRICTIONS. These covenants shall inure to the benefit of the Developer, the Architectural Committee, the Association and all owners of Home Sites in the Subdivision, jointly and severally. Any of said parties or entities, jointly or severally, shall have the absolute right to enforce any or all of the Covenants set out herein and/or as the same may be from time to time changed or amended, as above provided, by proceeding in any court of law or equity, by injunction or other appropriate remedy to enforce performance and/or restrain violation of any such Covenant, or to pursue any other remedy to which they or any of

them may be entitled. Said parties shall have the right to collect from the party or parties violating or (in the case of violations which may result in physical harm or property damage) threatening to violate such Covenant, either jointly or severally, any and all damages, costs, expenses and reasonable attorneys' fees resulting from any such court action. Notwithstanding any provisions of these Covenants which might be construed to the contrary, Developer, the Architectural Committee, the Association and the owner of any Home Site in the Subdivision shall have the right to enforce these Covenants without proof of pecuniary damage to his, its or their own property in the Subdivision.

29. ACCEPTANCE OF RESTRICTIONS. The acceptance of a deed or other contract or instruments of conveyance transferring title to any real property or condominium unit located within the Subdivision by any person or entity shall constitute an acceptance and affirmance by such person or entity of each and all of these Covenants, regardless of whether the same are set out or specified in such instrument of conveyance.

30. DEVELOPER'S LIABILITY. Neither Developer nor the Association, nor their respective successors, assigns, officers, directors, members, employees or agents shall be liable to the owners of any real property or condominium unit located within the Subdivision, their successors or assigns, their families, friends, guests or invitees, for injury or damages occurring because of the condition of any street, easement, right-of-way, common area or any other area or improvement in the Subdivision.

31. AMENDMENT OF COVENANTS. These Covenants may be amended or waived at any time upon the written agreement of the holders of two-thirds (2/3) of the votes entitled to be cast pursuant to Section 25 above and, so long as the Developer owns a Home Site and/or any unplatted land lying within the Subdivision, the Developer. Such amendment shall be duly signed and acknowledged by such owners and the Developer and placed of record in the Recorder's Office of Vanderburgh County, Indiana.

32. AMENDMENTS BY ASSOCIATION. The Association shall have the right to amend these Covenants for the purpose of curing any ambiguity in or any inconsistency between the provisions hereof; to include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the Subdivision which do not lower the standards of the Covenants contained herein; and/or to excuse any Home Site from compliance, on a case by case basis, with any part of these Covenants which may be violated by such Home Site if the Association determines such violation to be minimal in nature and not detrimental to the Subdivision and/or its residents. Such amendment shall be signed and acknowledged by duly authorized representative(s) of the Association and placed of record in the Recorder's Office of Vanderburgh County, Indiana.

33. SEVERABILITY. The invalidity, abandonment or waiver of any one or more of these Covenants shall in no way affect any of the other provisions herein set forth, all of which shall remain in full force and effect.

34. DURATION, TERMINATION OF RESTRICTIONS. These Covenants shall run with the title to the Subdivision and shall be binding upon all parties owning or claiming any

interest in any of the Subdivision, their successors in title, and all persons claiming under or through them for a period of twenty-five (25) years from the date of recording hereof, after which time these Covenants shall be automatically extended for successive periods of ten (10) years each, unless the holders of a majority of the votes entitled to be cast pursuant to Section 25 elect, after the twenty-fifth (25th) anniversary date to terminate such Covenants, in which case a writing to such effect, executed by the Board of Directors of the Association, shall be recorded with the Recorder of Vanderburgh County, Indiana. After having been so extended for ten (10) successive periods, these Covenants shall cease and terminate and no longer be of any force or effect.

IN WITNESS WHEREOF, the undersigned Owners have executed this instrument as of the day and year first above written.

Esquire Properties, LLC

By: _____

Its: _____

MANAGER

STATE OF Indiana)
) SS:
COUNTY OF Vanderburgh)

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, came Esquire Properties, LLC, by Aaron Miller, its Manager, who, in such capacity, acknowledged the execution of the above instrument on behalf of such limited liability company, and having been duly sworn, stated that any representations therein contained are true.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 7th day of April, 2009.

My County of Residence is: _____

My Commission Expires: _____

Marjorie M. Blalock
Signature of Notary Public

Printed Name of Notary Public



MARJORIE M. BLALOCK
Resident of Warrick County, IN
Commission Expires: October 3, 2015