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**DECLARATION OF COVENANTS AND RESTRICTIONS
OF ESCULAPIA ESTATES**

This **Declaration of Covenants and Restrictions** (this "*Declaration*"), made this 11th day of January, 2006, by **Beaver Lake Estate, L.L.C.** (the "*Developer*" or the "*Declarant*").

RECITALS:

A. The Developer is the owner of the real property described on Exhibit A attached to this Declaration (the "*Property*") and desires to create a community with open spaces, landscaped entrances and other common facilities for the benefit of the community, which shall be known as "*Esculapia Estates*."

B. The Developer desires to provide for the preservation of the values and amenities in Esculapia Estates and for the maintenance of the open spaces, landscaped entrances and other common facilities and, to this end, desires to subject the Property to these covenants, restrictions, easements, charges and liens, each of which is for the benefit of the Property and each Owner.

C. The Developer desires to reserve the right, pursuant to this Declaration, to plat additional Lots, create additional Common Area and make such additional property and improvements a part of Esculapia Estates.

D. The Developer has deemed it desirable, for the efficient preservation of the values and amenities in Esculapia Estates, to create an association which shall be assigned the powers of maintaining, administering and enforcing these covenants and restrictions and doing all other things necessary to preserve the values and amenities of this community.

E. The Developer has caused to be incorporated Esculapia Estates Property Owners Association, Inc., an Arkansas non-profit corporation, for the purpose of exercising these functions.

NOW, THEREFORE, the Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "*Covenants and Restrictions*") hereinafter set forth:

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or any supplemental Declaration (unless the context shall indicate a contrary intention), shall have the following meanings:

“*Assessments*” shall mean and refer to an Owner’s share of the Association Expenses that from time to time are assessed against an Owner by the Association in the manner herein provided, and other costs and expenses that from time to time are assessed against an Owner in accordance with the terms of this Declaration.

“*Association*” shall mean and refer to Esculapia Estates Property Owners Association, Inc., and Arkansas non-profit corporation, its successors and assigns.

“*Association Expenses*” shall have the meaning set forth in Section 5.04 hereof.

“*Board*” shall mean the Board of Directors of the Association.

“*Business Day*” shall mean any day of the week other than Saturday, Sunday or a day in which commercial banks are closed for business in Fayetteville, Arkansas.

“*Common Area*” shall mean all real and personal property owned, operated or controlled by the Association for the common use and enjoyment of all Owners.

“*Community Boat Dock*” shall mean the multi-slip boat dock and any attached or detached swim platforms owned by the Association, the parking area adjacent to the multi-slip boat dock, and related ancillary improvements associated with the multi-slip boat dock.

“*Design Guidelines*” shall have the meaning set forth in Section 6.03 hereof.

“*Design Review Committee*” shall mean the committee appointed pursuant to Section 6.01 hereof.

“*Developer*” or “*Declarant*” shall mean Beaver Lake Estate, L.L.C., its successors and assigns.

“*Developer Control Period*” shall have the meaning set forth in Section 3.02 below.

“*Development Permit*” shall have the meaning set forth in Section 6.02 hereof.

“*Improvement*” shall have the meaning set forth in Section 6.04.

“*Lot*” shall mean and refer to any platted lot within the Property that may be purchased by any person or owned by the Developer.

“*Member*” shall mean and refer to any Lot Owner who by virtue of holding fee simple title to (or upon the existence of a life estate, the holder of such estate in) any Lot is a Member of

the Association. If any Lot Owner holds title to more than one Lot, then the Lot Owner shall hold memberships equal to the number of Lots owned.

“*Mortgage*” shall mean any mortgage, deed of trust or other security instrument used for the purpose of subjecting real property to a lien or encumbrance as security for indebtedness.

“*Owner*” and “*Lot Owner*” shall mean and refer to any individual, person, firm, corporation, partnership, association, limited liability company, trust or other legal entity, or any combination thereof, whether one or more, who or that holds record fee simple title to (or upon the existence of a life estate, the holder of such estate in) any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation. The term “*Owner*” shall not include the Community Boat Dock Owner unless specifically stated.

“*Person*” shall mean an individual, firm, corporation, partnership, limited liability company, property owners association, trust, or any other legal entity, or any combination thereof.

“*Property*” shall mean and refer to that property described on Exhibit A that is subject to this Declaration and any property subjected to this Declaration in the future pursuant to the provisions of Article II.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property that is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Benton County, Arkansas and is more particularly described on Exhibit A, all of which property shall be referred to as the “*Property*.”

Section 2.02. Additions Limited to Developer. No one other than the Developer shall have the right to subject additional lands to this Declaration, unless the Developer shall indicate in writing to the Association that such additional lands may be included.

ARTICLE III

RESERVED RIGHTS OF DEVELOPER

Section 3.01. Reservation of Rights. Developer, as owner of the Property, expressly reserves the rights set forth in this Article with respect to the Property.

Section 3.02. Developer Control Period.

(a) **Commencement and Termination of Period.** The Developer Control Period for Esculapia Estates (the “*Developer Control Period*”) begins when the Developer executes its first contract with a third-party purchaser to purchase a Lot and shall terminate no later than sixty (60) days after Developer either (i) deeds at least ninety percent (90%) of all Lots created or as may be created in Developer’s sole discretion from the Property, or (ii) completes

all Common Area required for the efficient and proper use of Esculapia Estates, whichever shall occur later, but in no event later than ten (10) years from the date the Developer transfers and deeds its first Lot within Esculapia Estates to a third-party purchaser. Once the Developer Control Period terminates, the Developer Control Period shall not be extended or reactivated. The Developer shall have the right, but not the obligation, to terminate the Developer Control Period at any time in its sole discretion by filing an instrument in the real estate records of Benton County, Arkansas providing for such termination.

(b) Restrictions During Period. During the Developer Control Period, the Association shall not enter into any lease and/or contract for goods and services for the Property that extends beyond the Developer Control Period. Any contract and/or lease in contravention of the foregoing sentence shall be voidable at the option of the Association.

(c) Association Books and Records. During the Developer Control Period, all books and records kept by or on behalf of the Association shall be available for examination and copying by a Member in good standing or his authorized agent. This right of examination shall exist without reference to the duration of membership and may be exercised only upon five day's prior written notice and during reasonable business hours, or otherwise at a mutually convenient time and location. Notwithstanding the terms of this Declaration to the contrary, books and records kept by or on behalf of the Association may be withheld from inspection to the extent that they concern:

- (i) Personnel records;
- (ii) An individual's medical records;
- (iii) Records relating to business transactions that are currently in negotiation;
- (iv) Privileged communications with legal counsel; or
- (v) Complaints against a Member of the Association.

The Association may impose and collect a charge, reflecting the costs of materials and labor prior to providing copies of any books and records to a Member under this section.

Section 3.03. Reservation of Easements. Developer expressly reserves a perpetual easement over all driveways, parking areas, sidewalks and utility easements comprising a portion of the Common Area to connect them with other driveways, parking areas, sidewalks and utility easements within Esculapia Estates, the location of which shall be selected by the Developer.

Section 3.04. Right To Appoint and Remove Members of Board. During the Developer Control Period, the Board shall consist solely of members appointed and determined by Developer and Developer reserves the right to appoint and remove members of the Board pursuant to the provisions of Section 4.04 of this Declaration.

Section 3.05. Right to Amend to Comply with Law. Developer reserves the right to amend or supplement this Declaration in any manner necessary to establish the validity and

enforceability of this Declaration or to bring this Declaration into compliance with federal law, the laws of the State of Arkansas or any common law principle or judicial decision that may affect the validity and enforceability of this Declaration.

Section 3.06. Right to Amend to Comply with Title Insurance Company Requirements.

Developer reserves the right to amend or supplement this Declaration in any manner necessary to satisfy the requirements of any title insurance company that may be called upon by the Developer to issue title insurance policies to Owners, provided such amendment is reasonably required to support the validity and enforceability of the Declaration.

Section 3.07. Right to Amend to Make Corrections. Except as otherwise may be provided in this Declaration, so long as Developer owns any Lot, Developer reserves the right at any time and from time to time to unilaterally amend this Declaration as it deems appropriate, in its sole discretion, to carry out the purposes of Esculapia Estates established in this Declaration, or to correct an error or omission, or to address and/or correct any matter required by any lending institution, public body or title insurance company, or to change the configuration or size of any lands or Lots subject to this Declaration, or to facilitate the operation and management of Esculapia Estates and the Association, or the sale of Lots. Such an amendment by the Developer may be made unilaterally, without the approval of any other party, and shall become effective upon the recording of an instrument executed by the Developer in the real estate records of Benton County, Arkansas, setting forth the amendment; provided, however, that no such amendment to this Declaration may change to any material extent the configuration or size of any Lot or change the proportion or percentage by which an Owner shares the Association Expenses, unless such amendment is also approved by at least a majority vote of the Owners.

ARTICLE IV

THE ASSOCIATION

Section 4.01. Formation. Every Owner shall be a Member of and constitute the Association, which shall be governed by the Board. The operations of the Association may be managed by a professional administrator or management firm.

Section 4.02. Administration of the Project. The Association was formed to effectively and efficiently provide for the administration and enforcement of the provisions of this Declaration and the performance of other duties imposed upon and accepted by the Association concerning the Property and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions, and conditions of this Declaration. True copies of the Articles of Incorporation and Bylaws of the Association are attached hereto and expressly made a part hereof as Exhibit B and Exhibit C, respectively. Each Owner shall automatically become a Member of the Association upon acquisition of title to a Lot, and the membership of such Owner shall terminate automatically upon the Owner being divested of such ownership regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance on any interest in a Lot shall be entitled by virtue of such, to membership in the Association or to any other rights or privileges of such membership. The Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, specifically including, but not limited to, the right to levy and collect

assessments in the manner hereinafter provided, and to enforce building covenants and restrictions set forth herein and in the Bills of Assurance recorded upon the platting of subdivisions of the Property. The Association shall further have and is hereby granted the authority to adopt, promulgate and enforce such rules and regulations, including without limitation rules governing such use of the Common Area, as the Association may deem to be in the best interest of Esculapia Estates, and to enforce such rules and regulations by imposing reasonable fines for violations thereof. Any such fines shall be personal obligations of the Owner against whom they are assessed and the Association may file and prosecute lawsuits to recover any amounts due or require compliance with the rules and regulations in question. Unpaid fines shall accrue interest at a rate determined by the Board not to exceed the maximum interest rate allowed by applicable law. Unpaid fines and any accrued interest shall become a lien on the Lot in the same manner as an Assessment as set forth in Section 5.09 hereof and may be enforced as set forth in that Section.

Section 4.03. Voting. An Owner shall have, for purposes of voting, one vote for each Lot owned by it on all matters relating to the Association upon which a vote of the Members is conducted. All action taken by a vote of the Members shall be by majority vote unless a different vote is specified in this Declaration or in the Bylaws. If a Lot is owned by more than one Person, the owners thereof shall designate one of themselves as the "*Voting Member*" for that interest. Only the Voting Member shall be entitled to the vote attributed to a Lot on Association issues submitted to a vote of the Members. The Board shall have the right to disqualify the vote of a Member upon receipt of evidence that the Voting Member apparently acting for the Member lacked authority or was not properly designated by the multiple Persons owning a Lot.

Section 4.04. Appointment and Election of Board of Directors.

(a) **Developer May Appoint.** During the Developer Control Period, the Developer, in its sole discretion, may appoint, remove and replace any director of the Board and the Board shall consist solely of directors appointed and determined by the Developer. Directors are not required to be Owners. The Board shall consist of directors appointed by the Developer until the election/appointment of successor directors as provided below, and the qualification of the elected directors.

(b) **Initial Board.** The initial Board of the Association shall consist of three (3) members designated by the Developer as set forth in Section 4.04(a) above, who shall serve for a period commencing upon the date of their appointment and terminating at the end of the Developer Control Period upon the election of the successor directors.

(c) **Election of Board of Directors.** At least ten (10) days prior to expiration of the Developer Control Period, at a regular or special meeting of the Association called for such purpose, all Members eligible to vote, including the Developer for the Lots owned by it, shall elect three (3) successor directors to the Board. Membership in the Association is not a condition to election and service as a director. The three candidates receiving the highest number of votes of the Members shall be elected as directors. One successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the third annual Association meeting thereafter, and the election and qualification of that director's

successor. One successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the second annual Association meeting thereafter and the election and qualification of that director's successor. The third successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the first annual Association meeting thereafter and the election and qualification of that director's successor. The length of the terms to be served by the initial successor directors shall be determined by lot. Thereafter, directors shall be elected for three (3) year terms and shall serve until the successor of each is elected and qualified. The length of the terms may be modified by the Bylaws. Additional directors, not to exceed a total of seven, may be added to the Board by amendment of the Bylaws.

(d) Removal of Directors. Notwithstanding any provisions of this section to the contrary, after the expiration of the Developer Control Period, the Members by a two-thirds (2/3) majority vote of all persons present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any duly elected member of the Board for any reason or no reason.

ARTICLE V

ASSESSMENTS

Section 5.01. Agreement to Pay Assessments. Each Owner, by acceptance of a deed to a Lot (whether or not expressed in the deed of conveyance) covenants and agrees to pay to the Association all Assessments. In the event an Owner fails to pay such Assessments as set forth herein, the Association shall suspend Owner's voting rights and suspend the right of Owner to use or enjoy all Common Area and the Community Boat Dock until such Assessments, late charges and any other fees authorized herein are paid in full. The Association's exercise of this remedy shall not prohibit the Association from exercising any other remedy set forth herein.

Section 5.02. Exempt Property. Common Area as defined in Article I, all Common Area subsequently added to the Property and any areas that are designated for the common use of a particular subdivision, and all portions of the Property owned or otherwise dedicated to any political subdivision shall be exempt from the Assessments and liens of the Association.

Section 5.03. Assessments. Each Owner shall contribute pro rata toward the Association Expenses and toward any other agreed upon expenses based on the ratio of the number of Lots owned by the Owner to the total number of Lots deemed subject to this Declaration. The share of Association Expenses allocated to any portion of a subdivided Lot shall be determined pro rata based on the proportion of square feet of land in such subdivided portion to the total number of square feet in the originally platted Lot prior to being subdivided.

Section 5.04. Association Expenses. The Association shall be responsible for and shall consider the following as common expenses: (i) the costs of Association administration, which shall include all costs and expenses incurred by the Association in performing its duties under this Declaration and any bill of assurance affecting land subject to this instrument and taking other actions as may be authorized by this Declaration, (ii) the maintenance, repair, replacement, acquisition, construction and reconstruction of Common Area and easements; (iii) any deficit

remaining from a previous period; (iv) creation of reasonable contingency reserves; and (v) any other expenses and liabilities that may be incurred by the Association for the benefit of its Members under or by reason of this Declaration (collectively referred to herein as the "*Association Expenses*"). The Association shall treat as a contribution to reserves the excess Association revenues over Association expenses.

Section 5.05. Commencement of Assessments. Assessments shall commence on a Lot on the date of the initial sale from Developer to a third party. The initial purchaser of a Lot from the Developer shall pay to the Association at the closing of its purchase the pro rata amount of the Assessments accruing on the purchased Lot for the balance of the calendar year. An Owner shall be responsible for Assessments accruing during the period of its ownership of such property.

Section 5.06. Annual Budget. On or before December 1 of each year, the Board shall prepare or cause to be prepared and adopt an operating budget for the upcoming calendar year. The budget shall itemize the estimated Association Expenses for such calendar year, taking into consideration anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Assessment for the upcoming calendar year and as the primary guideline under which the Association shall be operated during such annual period. Developer shall estimate the budget for the first calendar year of the Association or portion thereof. The Association shall furnish a copy of the budget to each Owner.

Section 5.07. Notice of Payment; Late Charge.

(a) The Association shall further notify each Owner of the amount of the Assessment with respect to the Owner's Lot or Lots on or before December 15 of each year for the next year following such date. The Assessment shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times as may be determined by the Board.

(b) All unpaid installments of any Assessment shall incur a late charge in the amount of five percent (5%) of the delinquent installment and shall accrue interest at a rate equal to the maximum interest rate allowed by applicable law from the date each unpaid installment was due until paid. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

Section 5.08. Special Assessments. In addition to the Association's regular assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of a majority of the Board, a Special Assessment, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any Common Area or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Association Expenses), and

such assessment will be payable over such period as the Association may determine. Such Special Assessments, if any, shall be included within any and all references to Assessments. This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections of this Declaration, the By-Laws or the Articles. Any amounts assessed pursuant hereto shall be assessed to Owners prorata based on the number of Lots subject to this Declaration. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall incur a late charge in an amount equal to five percent (5%) of the delinquent payment and accrue interest at a rate determined by the Board not to exceed the maximum interest rate allowed by the applicable law from the date such portions become due until paid. All funds received from assessments under this Section shall be part of Association funds.

Section 5.09. Lien for Assessments.

(a) All sums assessed to the Owners pursuant to the provisions herein and in the Bylaws, together with interest thereon as provided herein, shall be secured by a lien on the respective Lots in favor of the Association, which lien shall be prior to all other liens upon the Lots except: (a) tax liens in favor of any assessing unit; and (b) any mortgage or deed of trust duly recorded prior to the Assessment Lien encumbering the Lot. To evidence a lien for sums assessed pursuant hereto, the Association may prepare and record in the real estate records a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the Lot. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. In addition to the unpaid amount of the Assessment, any recorded lien shall secure payment of all accrued interest on the assessment, late charges, title search fees, and for all costs of collecting such amounts, including attorneys' fee, whether suit be brought or not, and the Owner shall be personally liable for all such amounts.

(b) Liens created pursuant to subsection (a) above may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Arkansas or, to the extent allowed under the laws of the State of Arkansas, by nonjudicial foreclosure. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot that shall become due during the period of foreclosure and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in at any foreclosure sale, to apply as a cash credit against its bid all sums due the Association and to hold, lease, mortgage or convey the subject Lot. Furthermore, the rights of the Association herein set forth above shall be in addition to any other rights provided by law with respect to liens for and collection of unpaid assessments.

(c) The Board shall have the right to settle and compromise any lien securing unpaid Assessments and the amount of the unpaid Assessment, including all late charges and accrued interest thereon, if such action is deemed to be in the Association's best interest.

Section 5.10. Personal Obligation of Owner.

(a) The amount of any Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving any lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, or in the event that the Association must bring an action to enforce these covenants, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including attorneys' fees. The Association shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments, together with any outstanding costs, charges, and attorney fees, to the Developer, any Owner or group of Owners, or any other Persons.

(b) If a Lot is owned by more than one Person, each Person with an ownership in the subject Lot shall be jointly and severally liable for all Assessments. No Owner may avoid or diminish its personal obligation for payment of Assessments by waiver of the use and enjoyment of any of the Common Area or by abandonment of its Lot or by waiving any services or amenities provided for in this Declaration.

Section 5.11. Unpaid Assessments Shall Be Paid from Sales Price. In the case of a voluntary sale or conveyance of a Lot, all unpaid Assessments, or other assessments or charges against an Owner, for its pro rata share of Association Expenses or other amounts due the Association shall be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatsoever nature, except the following:

- (i) assessments, liens and charges for taxes past due and unpaid; and
- (ii) payments due under mortgages and other security instruments duly recorded prior to the date the Assessment or other debt due the Association.

Section 5.12. Statement of Account. Upon the request of any Owner, mortgagee, prospective mortgagee or prospective purchaser of a Lot, the Association, for a reasonable fee, shall issue a written statement setting forth the following:

- (i) The amount of the unpaid Assessments or other amounts due the Association, if any, with respect to such Lot;
- (ii) The amount of the current Assessments and the date or dates upon which installments thereof become due;
- (iii) Credit for advanced payments or prepaid items; and
- (iv) That such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

Section 5.13. Personal Liability of Purchaser. Subject to the provisions herein, a purchaser of a Lot, other than purchasers from Developer, shall be jointly and severally liable with the seller thereof for all Assessments unpaid at the time of the purchase; provided, however,

that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

Section 5.14. Subordination of the Lien to Mortgage; Foreclosure; Remaining Liability.

(a) The lien of unpaid assessments provided for in this Article shall be subordinate to the lien of any prior recorded Mortgage on the Lot. The lien securing the Assessments shall be extinguished by the sale or transfer of any Lot pursuant to a decree of foreclosure of a first Mortgage or a deed in lieu of foreclosure of such a Mortgage. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due.

(b) When the purchaser of a Lot obtains title thereto as a result of foreclosure of a first Mortgage or other security instrument or a deed in lieu of such a foreclosure, such purchaser, its successors and assigns, which may include but not be limited to the mortgagee or other secured party, shall not be liable for any of the Assessments chargeable to such Lot accruing after the date of recording such mortgage or security interest but prior to the acquisition of title to such Lot by such purchaser. Such unpaid share of Association expenses shall be deemed to be Association expenses collectible from all Members, including such purchaser, its successors and assigns. The provisions of this section, however, shall not release any Member from personal liability for unpaid assessments.

Section 5.15. Records; Rights to Inspect.

(a) The Board shall keep, or cause to be kept, a book with a detailed account of the receipts and disbursements affecting the Association and its administration and specifying the expense of maintenance and repair of the Common Area.

(b) Any Member, or that Member's duly appointed representative, shall have access to the Association's books of account, operating statements and other financial information and minutes from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as a Member. Access shall be at any reasonable time at the office of the Association, if one is maintained, or such other place within Benton County, Arkansas as the Board prescribes. The Board shall establish rules regarding the notice the Member must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charge(s) imposed by the Association for copying records requested by the Member. As a condition to permitting a Member to inspect the books of account, and minute records, the Association may require the Member to agree in writing not to use or allow the use of such information for commercial or other purposes not related directly to membership in the Association. Notwithstanding the terms of this Declaration to the contrary, books and records kept by or on behalf of the Association may be withheld from inspection to the extent that they concern those items listed in Section 3.02(c).

ARTICLE VI

DESIGN REVIEW COMMITTEE

Section 6.01. Designation of Committee. The Association shall have a Design Review Committee, consisting of at least three and not more than five members who shall be natural persons. The Members of the Design Review Committee, and all vacancies, shall be appointed by the Developer until the expiration of the Developer Control Period. When the Developer Control Period expires, the members of the Design Review Committee, and all vacancies, shall be appointed by the Board. During the Developer Control Period, status as a Member shall not be a prerequisite to being appointed a member of the Design Review Committee. Upon the expiration of the Developer Control Period, however, at least one member of the Design Review Committee shall be a Member. The Board shall designate a member of the Design Review Committee as the chairman of the committee and a member as the secretary thereof. The members of the Design Review Committee may appoint a vice chairman of the committee. The Board may, at its sole discretion, elect to pay a stipend to the members of the Design Review Committee in any amount determined by it to be appropriate. The Board may employ and compensate professional consultants to assist the Design Review Committee in discharging its duties, which authority may be delegated to the Design Review Committee.

Section 6.02. Function of Design Review Committee. No Improvement or structure of any kind shall be constructed, erected, placed, altered, added to, reconstructed, or permitted to remain upon any Lot and no construction activity or grading shall be made unless a permit (a "*Development Permit*") is issued by the Design Review Committee. Compliance with this Declaration, the applicable Bill of Assurance, and any applicable Design Guidelines, or a variance from the Design Guidelines, is required for the issuance of a Development Permit.

Section 6.03. Design Guidelines. The Developer may create Design Guidelines (the "*Design Guidelines*") in connection with the recording or amendment of a Bill of Assurance to supplement these Declarations and the Bill of Assurance with respect to items concerning the design of Improvements and placement of Improvements on the Lot, approved construction materials, approved construction methods, the use of a Lot before, during and after construction commences and is completed, establishing procedures for applying for and the issuance of Development Permits, establishing procedures for obtaining a variance from the Design Guidelines, and other related matters concerning Improvements on the Property. The Design Guidelines may be modified by the Developer during the Developer Control Period or, thereafter, by the Board. The Design Guidelines may impose obligations concerning the Property more restrictive than those set forth in these Declarations, but may not make the obligations of an Owner materially greater than those set forth in the applicable Bill of Assurance.

Section 6.04. Definition of "Improvement". "*Improvement*" shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, driveways, lakes, swimming pools, tennis courts, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement, including without limitation, landscaping, that may be reasonably considered to materially alter the appearance of the property and which

may not be included in any of the foregoing. The definition does not include garden plant, shrub or tree replacements or any other replacement or repair of any magnitude that would not be reasonably considered to materially change exterior colors or exterior appearances.

Section 6.05. Majority Vote. A majority vote of all members of the Design Review Committee is required for approval of a request or application for a Development Permit.

Section 6.06. Basis of Approval. The Design Review Committee shall approve only those requests or applications for Development Permits that conform to the provisions and intent of this Declaration, any applicable Bill of Assurance and the applicable Design Guidelines. The Design Review Committee may approve an application subject to satisfaction of conditions or requirements that it finds to be necessary to insure compatibility with the provisions of this Declaration, any applicable Bill of Assurance and the applicable Design Guidelines. The Design Review Committee may return for modification any application or request for a Development Permit that does not include information sufficient to allow the committee to make the above determinations. Such a return, for the purpose of any time periods required by this Declaration, any applicable Bill of Assurance and the applicable Design Guidelines, shall be deemed a disapproval.

Section 6.07. Appeal. The decisions of the Design Review Committee may be appealed by the Owner submitting a request to the Board. Rules and procedures for perfecting, commencing and prosecuting an appeal of a Design Review Committee decision, including rules for the conduct of appeal hearings, may be established in the Bill of Assurance platting the Property or any Future Development Lands or, absent inclusion in the Bill of Assurance, promulgated by the Board. No such rules or procedures for appeals shall require any act by an Owner to perfect or commence an appeal to be performed fewer than nine Business Days after the date the Design Review Committee issues its written denial or conditioned approval of an application for a Development Permit. The Design Review Committee's decision shall be final, conclusive and binding upon the applicant unless an appeal is properly commenced in accordance with the applicable procedures.

Section 6.08. Failure of Committee To Act. Plans, specifications and other items properly submitted for review and approval in accordance with applicable rules, regulations or submission requirements shall be deemed approved if the Design Review Committee fails to act by written notice on or before forty-five (45) days after all such required information and materials are submitted (a "*Default Approval*"), provided, however, no Default Approval shall be deemed to permit a violation of this Declaration, any Bill of Assurance or any zoning requirements, and no Improvement that violates such instruments shall be erected or allowed to remain.

Section 6.09. Limitation of Liability. The primary responsibility of the Design Review Committee is to review Development Permit applications and requests submitted to it to determine if the proposed improvements comply with these Declarations, the applicable Bill of Assurance and any applicable Design Guidelines. Neither the Developer, the Association, the Board, the Design Review Committee nor any officers, members, employees and agents thereof shall be liable, in damages or otherwise, to anyone submitting an application or request for a Development Permit or to any owner of land affected by this Declaration by reason of mistake of

judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications. The Committee does not review and assumes no responsibility for the following:

- (A) The structural adequacy, capacity or safety features of the proposed improvement or structure.
- (B) Whether or not the location of the proposed improvement or structure on the building site is free from any possible hazard whether caused by conditions occurring either upon or off of the property.
- (C) Soil erosion or soil conditions.
- (D) Mechanical, electrical or any other technical design requirements for a proposed project.
- (E) Compliance with any building codes, safety requirements, or governmental laws, regulations, codes or ordinances.
- (F) Performance or quality of work of any contractor.

By acceptance of a deed to any Lot, the Owner acknowledges the foregoing and waives and releases the Developer, the Association, the Board, the Design Review Committee and all officers, members, employees and agents thereof from any and all liability arising from items for which any of such Persons have not expressly assumed responsibility.

Section 6.10. Meetings.

(a) Scheduled Meetings; Agenda. The Design Review Committee shall meet on an established schedule subject to the level of design review required, provided, however the Design Review Committee shall meet no less often than once monthly. Owners or their representatives may schedule items on the meeting agenda of the Design Review Committee by notifying the chairman or secretary of the committee by telephone or in writing. The applicants will be advised of the scheduled meeting time. The agenda for a meeting shall be closed at 5:00 p.m. two Business Days prior to the scheduled meeting.

(b) Special Meetings. The chairman of the Design Review Committee acting alone, or any two members of the committee acting jointly, may call a special meeting of the Design Review Committee by giving telephonic notice of such meeting to its members on or before twenty four hours of such meeting time. The Design Review Committee may hear any item that may have otherwise been heard by the committee at a regularly scheduled meeting. The voting requirements of Section 6.05 above shall apply.

Section 6.11. Reasonable Fee. The Board may establish reasonable fees that the Design Review Committee may charge an Owner for its services in reviewing that Owner's application or request for a Development Permit. The Design Review Committee may require any such fees to be paid in advance of its review of any submission.

ARTICLE VII

MAINTENANCE

Section 7.01. Duty of Maintenance. Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that Lot, including buildings, improvements and grounds, in a well-maintained, safe, clean and attractive condition at all times. Maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste.
- (b) Lawn mowing.
- (c) Tree and shrub pruning.
- (d) Watering.
- (e) Keeping exterior lighting and mechanical facilities in working order.
- (f) Keeping lawn and garden areas alive, free of weeds and attractive.
- (g) Keeping parking areas, driveways and roads in good repair.
- (h) Complying with all governmental health and police requirements.
- (i) Repainting of improvements.
- (j) Repair of exterior damages to improvements.

Section 7.02. Enforcement. If, in the opinion of the Board, any Owner or occupant of a Lot has failed in any of the foregoing duties or responsibilities, then the Board may provide written notice of that failure, giving the Owner or occupant ten days from receipt to perform the care and maintenance required. Should any person fail to fulfill this duty and responsibility within the ten day period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform needed care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any Lot on which work is performed shall jointly and severally be liable for the cost of the work and shall promptly reimburse the Association for all costs. If the Association has not been reimbursed within thirty days after invoicing, the indebtedness shall be a debt of all of the Owners and occupants jointly and severally and shall constitute a lien against the Lot. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article V, and the Association shall have identical powers and rights in all respects, including, but not limited to, the right of foreclosure.

ARTICLE VIII

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon all Lots and Common Area for the benefit of each other Lot and Common Area and may be enforced by any Owner or the Association through any remedy available at law or in equity:

(a) No garbage, refuse, rubbish, tree limbs, pine straw, leaves or cuttings shall be deposited on any street, road or Common Area or on any Lot unless placed in a container suitable for garbage pickup.

(b) No building material of any kind or character shall be placed upon any Lot except in connection with construction approved by the Design Review Committee or construction not requiring Design Review Committee approval. Construction shall be promptly commenced and diligently prosecuted.

(c) No service yards, woodpiles or storage areas shall be so located as to be visible from a street, road or Common Area.

(d) Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

(e) No livestock, animals or poultry shall be kept on any Lot or Common Area except a reasonable number of ordinary household pets belonging to the household.

(f) No signs, plaques or communication of any description shall be placed on the exterior of any Lot or Common Area unless approved by the Design Review Committee. Provisions concerning the use of signs advertising a Lot for sale and political campaign signs shall be set forth in the Design Guidelines. The applicable Design Guidelines may provide that "For Sale" and political campaign signs shall be deemed approved unless affirmative action is otherwise taken by the Design Review Committee.

(g) No nuisances shall be allowed in Esculapia Estates nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with their right of quiet enjoyment.

(h) No immoral, improper, offensive or unlawful use shall be made of Esculapia Estates or any part thereof, and all valid laws, zoning, bylaws and regulations of all governmental bodies having jurisdiction shall be observed.

(i) No portion of a Lot (other than the entire Lot) may be rented, and no transient may be accommodated therein unless by consent of the Owner.

(j) No used or previously erected or temporary house, structure, house trailer or nonpermanent outbuilding shall ever be placed, erected or allowed to remain on any Lot or Common Area.

(k) Unless prior written approval is obtained from the Association, no junk vehicle, commercial vehicle, recreational vehicle, truck, camper, camp truck, house trailer or other machinery or equipment (except as may be reasonable and customary in connection with the use and maintenance of any improvements located upon the Property and except for such equipment and/or machinery as the Association may require in connection with the maintenance and operation of the Common Area) shall be kept upon the Property, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be performed. This restriction shall not apply to vehicles, trailers, machinery, equipment or the like stored and kept within an enclosed storage room or garage.

(l) All buildings built on any Lot shall comply with the setback restrictions imposed upon the Lot on either a recorded plat in the Circuit Clerk's office of Benton County, Arkansas or in the deed to each purchaser of a Lot. Bills of assurance platting any Property may provide that variances from such setback restrictions may be granted.

(m) Easements for access to, installation and maintenance of utilities and drainage of facilities and for pedestrian and golf cart traffic may be reserved in rights of way of drives and roads and in such other locations as shown on a recorded plat of the Property.

(n) Each Owner hereby grants a right of access to his Lot to the Association, any managing agent of the Association, and/or any other person authorized by the Board or the managing agent for the purpose of making inspections or for the purpose of correcting any conditions originating in his Lot and threatening another Lot or any Common Area, or for the purpose of performing installations, alterations or repairs to the parts of the Lot over which said persons have control and/or responsibility for maintenance. Requests for such access shall be made in advance and entry must be at a time reasonably convenient to the Owner. In case of an emergency, this right of entry shall be immediate whether the Owner is present or not.

ARTICLE IX

COMMON AREA

Section 9.01. Easements of Enjoyment. Subject to the provisions of Section 9.04 below, every Member shall have a right and easement of enjoyment in and to the Common Area. This easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

Section 9.02. Title to Common Area. The Developer agrees to convey title to platted Common Area to the Association within one year after the expiration of the Developer Control Period. Any conveyance of Common Area shall be by special warranty deed and shall be free and clear of all liens securing any indebtedness or obligation of the Developer (other than the current year's ad valorem real estate taxes and special improvement district assessment that are due but not payable), but may be subject to any rights of access or easements retained by the Developer for utilities, maintenance or similar purposes, the rights of Developer under Section

9.03 below, and any other encumbrance that does not materially hinder the intended use of the particular Common Area.

Section 9.03. Operation and Maintenance.

(a) After conveyance thereof by Developer, the Association shall maintain and operate the Common Area at its sole cost and expense.

(b) For a period of five (5) years after Developer conveys a portion of a Common Area to the Association, the Developer shall have the right, but not the obligation, to enter upon such Common Area and perform such repairs, maintenance, reconstruction or replacement of the improvements located on such Common Area so as to keep the improvements, in Developer's reasonable discretion, in good condition and repair. Developer shall give the Association not less than ten (10) days written notice of its intent to enter upon the Common Area to perform such work. The Association shall pay Developer within ten (10) days after written demand therefor all cost and expense incurred by the Developer in performing such work. All amounts due from the Association shall accrue interest from the date of demand until payment at the highest rate allowed by law. The Association shall be responsible for all attorneys' fees and expenses, including litigation expenses, incurred by Developer in collecting amounts due from the Association and the enforcement of Developer's rights under this section.

Section 9.04. Extent of Easements. The Owners' rights and easements of enjoyment created shall be subject to the following:

(a) The right of the Association to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Area;

(b) The right of the Association to borrow money for the purpose of improving all or any part of the Common Area, and to mortgage all or any part of the Common Area, provided any mortgage on streets, roads and utilities that constitute Common Area shall be subject to the rights of Owners, including the Community Boat Dock Owner, to use those particular Common Area upon payment of any customary, ordinary use charges and standard fees;

(c) The right of the Association to take reasonably necessary steps to protect all or any part of the Common Area against foreclosure;

(d) The right of the Association to suspend the easements of enjoyment of any Member of the Association during the time any assessment levied under Article IV or any other cost or expense owing to the Association remains unpaid, and for any period not to exceed 30 days for any infraction of its published rules and regulations; and

(e) to the Articles of Incorporation and the By-Laws of the Association.

Section 9.05. Private Road. The road within the Property providing access to the Common Area (the "*Private Road*") shall remain private roadways and are not dedicated to the public by the recordation of this Declaration, any supplement or amendment to this Declaration, or any subsequent Bill of Assurance. The Private Road shall, upon conveyance by Developer to

the Association, become Common Area and the repair, maintenance, reconstruction and replacement of the Private Road shall be the responsibility of the Association and the cost and expense of such work shall be an Association Expense. The Easement of Enjoyment granted pursuant to Section 9.01 above shall include, without limitation, the right of ingress, egress and access by all Owners, their lessees, agents, and invitees, over and across the Private Road, provided that the Board may prescribe reasonable, non-discriminatory rules and regulations concerning access, ingress and egress, use of golf carts and other unlicensed vehicles on the streets, and may limit access by Owners and others to streets solely providing access to utilities and maintenance areas operated by the Association. Only licensed drivers shall operate vehicles, licensed or unlicensed, on streets in Esculapia Estates.

ARTICLE X

COMMUNITY BOAT DOCK PROVISIONS

Section 10.01. Preliminary Statement. The Community Boat Dock shall be available for the use of all Members and their guests. Some Lots, Common Area, and other areas owned, occupied or used by residents of Esculapia Estates adjoin and share common boundaries with the Community Boat Dock.

Section 10.02 Rules and Regulations. The Association shall be responsible for all rules and regulations governing the use and enjoyment of the Community Boat Dock. The Association shall also determine, in its sole discretion, to whom and when any and all permits are to be requested from the Corp of Engineers (subject to the Rules and Regulations of the Corp of Engineers). The rules and regulations governing the use and enjoyment of the Community Boat Dock shall be published and copies shall be available upon request by any Owner. Each Owner shall abide by such rules and regulations and agrees to be subject to all terms, conditions and penalties contained in such rules and regulations.

Section 10.03 Waiver of Liability. The Developer, the Association and its members (in their capacity as members), and any officers and directors, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such parties, shall not in any way be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever arising from the use, or misuse, of the Community Boat Dock by its members or their guests.

ARTICLE XI

AMENDMENT OF DECLARATION

Section 11.01. Amendment Before Close of First Sale. Prior to the delivery of the first deed to an unrelated Person, this Declaration, any recorded plat(s) of the Property, and any amendment(s) or supplement(s) to either may be amended in any respect or revoked by the execution and recordation in the real estate records of Benton County, Arkansas by the Developer, and any mortgagee of record, of an instrument amending, supplementing or revoking the Declaration, any recorded plat(s) or any amendment(s) or supplement(s) to either.

Section 11.02. Amendment After Close of First Sale.

(a) After Developer's delivery of the first deed to a Lot to an unrelated Person, this Declaration, any recorded plat of the Property, and any amendment or supplement to either, or any portion of either, may be amended, supplemented, or revoked in any respect by the Developer without the vote or written consent of the Owners or the Association if such amendment, supplement, or revocation results from the exercise by Developer of any of its reserved rights set out in Article III of this Declaration.

(b) Any amendment, supplement, or revocation of this Declaration, any recorded plat of the Property, or any amendment or supplement to either for any purpose not related to matters governed by the rights reserved exclusively to the Developer in Article III of this Declaration, and except as otherwise provided in this Declaration or the laws of the State of Arkansas, shall require an instrument signed by not less than sixty-seven percent (67%) of all Owners, including votes of the Developer for Lots owned by it, provided that any such amendment or supplement shall in no way modify or eliminate the reserved rights of the Developer set out in Article III.

(c) Any amendment, supplement, or revocation of this Declaration, any recorded plat of the Property, or any amendment or supplement to either, whether made by Developer pursuant to its reserved rights set out in Article III, or by the Owners as provided in the preceding paragraph, shall not be effective until such amendment, supplement, or revocation is duly recorded.

Section 11.03. Reserved Rights of Developer Not Subject to Amendment. The terms of this section and the reserved rights of the Developer, including but not limited to the right to amend this Declaration, set out in Article III hereof shall not be altered, impaired, prejudiced, or eliminated by the Owners pursuant to Section 11.02(b) above by an amendment or supplement to this Declaration, any recorded plat of the Property, or any amendment or supplement to either, unless such amendment or supplement is executed by Developer.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of 40 years from the date this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of 10 years unless an instrument terminating these Covenants and Restrictions signed by the then Owners of 67% of the Lots has been recorded prior to the commencement of any 10-year period.

Section 12.02. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last-known address of the person who appears as Member or Owner of a Lot on

the records of the Association at the time of mailing. Each purchaser of a Lot shall forward a copy of his recorded warranty deed to the Association or its officers.

Section 12.03. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and Restrictions. Failure by the Association or any Owner to enforce any Covenant or Restriction shall in no event be deemed a waiver of the right to do so thereafter. The right to obtain an injunction or other equitable remedy shall be available notwithstanding the availability of an adequate remedy at law. The Owner or Owners of any Lot against whom an enforcement action is commenced waives the right to assert the availability of an adequate remedy at law as a defense to an injunction or other equitable remedy.

Section 12.04. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 12.05. Attorney Fee. In any legal or equitable proceeding for the enforcement or to restrain the violation of this instrument or any provision thereof, by reference or otherwise, the prevailing party or parties shall be entitled to attorney fees in such amount as the court finds reasonable. All remedies provided for herein, or at law or equity, shall be cumulative and not exclusive.

Section 12.06. Dissolution. The Association may be dissolved with consent given in writing and signed by not less than three-fourths of the Members. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be conveyed and granted and assigned to any nonprofit corporation, association trust or other organization to be devoted to same or similar purposes.

Section 12.07. Construction of Instrument. This Declaration shall not be construed more strictly against a party merely by virtue of the fact that it may have been prepared by counsel for a party. The headings of various Sections in this Declaration and all exhibits and attachments hereto are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. Section and Exhibit references are to Sections of and Exhibits to this Declaration unless otherwise specified. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Declaration and its exhibits shall, unless otherwise specifically stated, refer to this instrument as a whole and not to any particular provision of this Declaration.

[SIGNATURE FOLLOWS ON IMMEDIATELY SUCCEEDING PAGE]

EXHIBIT A

PROPERTY DESCRIPTION

LEGAL DESCRIPTION

PART OF THE EAST 1/2 OF THE SW 1/4 AND PART OF THE SW 1/4 OF THE NE 1/4 AND PART OF THE SE 1/4 OF SECTION 23, T-19-N, R-29-W, BENTON COUNTY, ARKANSAS DESCRIBED AS BEGINNING AT THE NW CORNER OF THE SE 1/4 OF SAID SECTION 23, THENCE S 87°25'31" E 162.79'; THENCE N 46°24'18" E 455.35'; THENCE S 87°25'23" E 651.76'; THENCE S 43°04'10" E 233.98'; THENCE S 46°37'12" W 227.81'; THENCE S 01°27'39" W 163.96'; THENCE S 87°27'23" E 162.76'; THENCE S 42°54'12" E 232.63'; THENCE S 01°24'47" W 325.60'; THENCE S 56°36'08" W 128.98'; THENCE S 48°50'31" W 145.67'; THENCE S 29°08'07" W 155.54'; THENCE S 20°31'58" W 208.74'; THENCE S 07°13'09" W 161.61'; THENCE S 42°36'49" W 164.63'; THENCE S 39°17'01" W 163.99'; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 7.20', WITH A RADIUS OF 383.68', WITH A CHORD BEARING OF N 50°40'45" W, WITH A CHORD LENGTH OF 7.20', THENCE N 50°08'24" W 141.41'; THENCE THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 312.56', WITH A RADIUS OF 246.79', WITH A CHORD BEARING OF N 86°25'13" W, WITH A CHORD LENGTH OF 292.08'; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 114.72', WITH A RADIUS OF 246.79', WITH A CHORD BEARING OF S 43°58'45" W, WITH A CHORD LENGTH OF 113.69'; THENCE S 30°39'37" W 82.64'; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 192.65', WITH A RADIUS OF 623.91', WITH A CHORD BEARING OF S 39°30'34" W, WITH A CHORD LENGTH OF 191.89'; THENCE S 48°21'19" W 144.86'; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 5.20', WITH A RADIUS OF 6366.28', WITH A CHORD BEARING OF S 48°19'56" W, WITH A CHORD LENGTH OF 5.20', THENCE N 18°29'49" W 229.93'; THENCE N 25°43'27" W 114.69'; THENCE N 21°28'54" W 209.41'; THENCE N 35°42'51" W 181.33'; THENCE N 20°04'56" W 228.44'; THENCE N 42°36'26" W 312.54'; THENCE N 01°38'02" E 477.05'; THENCE N 01°39'47" E 103.52'; THENCE N 01°35'11" E 79.19'; THENCE N 73°46'48" E 513.28' TO THE POINT OF BEGINNING AND CONTAINING 64.126 ACRES. PROPERTY IS SUBJECT TO THE RIGHT OF WAY OF HIGHWAY 94 ON THE SOUTH SIDE AND BUMBLEBEE LANE AND BAYSIDE DRIVE AS SHOWN HEREDN.

2006 3168
Recorded in the Above
Deed Book & Page
01-18-2006 09:00:55 AM
Brenda DeShields-Circuit Clerk
Benton County, AR

EXHIBIT B

ASSOCIATION ARTICLES OF INCORPORATION

Benton County, AR
I certify this instrument was filed on
01-18-2006 09:00:55 AM
and recorded in Deed Book
2006 at pages 3145 - 3168
Brenda DeShields-Circuit Clerk

2006 3173
Recorded in the Above
Deed Book & Page
01-18-2006 09:09:18 AM
Brenda DeShields-Circuit Clerk
Benton County, AR

**BILL OF ASSURANCE
Esculapia Estates**

Book/Ps: 2006/3173
Term/Cashier: CIRCLK04 / swhite
Tran: 3780.113344.315515
Recorded: 01-18-2006 09:09:24
DFE Deed
REC Recording Fee
Total Fees: \$ 83.00

83.00
0.00

This Bill of Assurance is executed by **Beaver Lake Estate, L.L.C.**, an Arkansas limited liability company ("*Declarant*"), and made effective as of the Effective Date (as defined below).

RECITALS:

A. Declarant is the owner and developer of the lands more particularly described on Exhibit A attached hereto and made a part hereof, shown on the plat described below as Lots 1 through 17, Esculapia Estates, Benton County, Arkansas ("*Esculapia Estates*").

B. Esculapia Estates is subject to those certain Declaration of Covenants and Restrictions filed January 18, 2006 in the office of the Circuit Clerk and Recorder of Benton County as Instrument No. 2006 3145 (the "*Declaration*").

C. Declarant desires to subdivide all of the property shown on the plat described herein into building lots, open spaces and streets as shown on the plat filed herewith, and that said property be held, owned and conveyed subject to the protective covenants herein contained, in order to enhance the value of Esculapia Estates and the Community.

NOW, THEREFORE, Declarant, for and in consideration of the benefits to accrue to it, its successors and assigns, which benefits it acknowledges to be of value, has caused to be made a plat, showing a survey made by Michael E. James of James Surveying & Consulting Inc., dated December 19, 2005 (also showing a revision date of January 3, 2006), and bearing a Certificate of Approval executed by the Benton County Planning Board on January 4, 2006, filed of Record in Plat Book 2006, Page 10, on January 4, 2006 and showing the boundaries and dimensions of the property now being subdivided into lots and streets (the "*Plat*").

The lands embraced in the Plat shall be forever known as "Lots 1 through 17 of Esculapia Estates, Benton County, Arkansas" and any and every deed of conveyance of any lot in Esculapia Estates describing the same by the number shown on said Plat shall always be deemed a sufficient description thereof.

1. **Covenants and Restrictions.** The lands platted pursuant to this Bill of Assurance and any interest therein shall be held, owned and conveyed subject to and in conformity with the Declaration and the covenants and restrictions set forth herein.

2. **Definitions.** The following terms and phrases used in this Bill of Assurance shall be defined as follows:

(a) *Association* shall mean Esculapia Estates Property Owners Association, Inc., an Arkansas nonprofit corporation, established pursuant to the Declaration.

- (b) *Board of Directors* means the Board of Directors of the Association.
- (c) *Community* shall mean the land and improvements subject to the Declaration.
- (d) *Community Boat Dock* shall mean the multi-slip boat dock and any attached or detached swim platforms owned, controlled or maintained by the Association, the parking area adjacent to the multi-slip boat dock, and related ancillary improvements associated with the multi-slip boat dock.
- (e) *Declarant* shall mean Beaver Lake Estate, L.L.C., an Arkansas limited liability company.
- (f) *Declaration* shall have the meaning set forth in Recital B above.
- (g) *Design Guidelines* shall mean the "Design Guidelines and Requirements" attached hereto as Exhibit B and made a part hereof, as amended from time to time.
- (h) *Design Review Committee* shall mean the Design Review Committee established pursuant to the Declaration.
- (i) *Development Permit* shall have the meaning set forth in Section 6 below.
- (j) *Effective Date* shall mean the date this Bill of Assurance is filed with the Recorder of Benton County, Arkansas.
- (k) *Improvement* shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, driveways, swimming pools, lakes, tennis courts, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement that materially alters the appearance of the property and which may not be included in any of the foregoing. The definition does not include garden plant, shrub or tree replacements or any other replacement or repair of any magnitude that does not materially change exterior colors or exterior appearances.
- (l) *Lot* shall mean any and all of the single-family lots reflected on the Plat.
- (m) *Owner* shall mean and refer to any individual, person, firm, corporation, partnership, association, limited liability company, trust or other legal entity, or any combination thereof, whether one or more, who or that holds record fee simple title to (or upon the existence of a life estate, the holder of such estate in) any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.
- (n) *Plat* shall mean the plat of Esculapia Estates described in the "NOW THEREFORE" paragraph above.

3. **Utility Easements.** The Plat reflects certain easements for utilities. Declarant hereby donates and dedicates the utility easements to and for the use of public utilities, without

limiting the generality of the foregoing, electric power, gas, telephone, water, sewer and cable television with the right hereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress thereto and egress therefrom for the installation, operation, maintenance, repair and replacement of such underground utility services and all improvements, including required surface improvements, necessary for such services. Declarant further donates and dedicates to and for the use of the Association all such utility easements reflected on the Plat for the purpose of the installation, operation, maintenance, repair and replacement of improvements of streetlights. The grant and dedication of the foregoing easement to the Association shall include a reasonable right over and across any Lot for access to the easement for the purpose of maintenance, upkeep and replacement of such improvements. The filing of this Bill of Assurance and Plat for record in the office of the Circuit Clerk and Recorder of Benton County shall be a valid and complete delivery and dedication of the aforementioned easements subject to the limitations herein set out. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such utility easement except as approved by the Board of Directors. In the event any trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such easement, no person, firm or corporation engaged in supplying public utility services shall be liable for the destruction of same in the installation, maintenance, repair or replacement of any utility service located within the area of such easement.

4. **Streets and Roads.** All streets and roads in Esculapia Estates are and shall be private roads at all times and shall be Common Property as defined in the Declaration. Each Lot Owner shall be responsible for a portion of the maintenance costs of such streets and roads as more particularly set out in the Declaration.

5. **Design Review; Development Permits.**

(a) Development Permit Required. No Improvement of any kind shall be constructed, erected, placed, altered, added to, reconstructed, exterior repainted, or permitted to remain upon any Lot, and no construction activity, grading or removal of trees that are four inches or greater in diameter measured three feet above grade shall be made and no landscaping performed (other than replacement of garden plants, shrubs and trees that does not materially change exterior appearances) unless a Development Permit is issued by the Design Review Committee as provided for in the Declaration. Compliance with the Design Guidelines, or a variance therefrom, is required for the issuance of a Development Permit.

(b) Amendment of Design Guidelines. The Design Guidelines may be amended at any time by a vote of not less than 75% of the members of the Board of Directors.

(c) Variance from Design Guidelines. The Design Review Committee may grant variances from the Design Guidelines for the purposes and in the manner more specifically set forth therein.

6. **Use of Land.** The Lots herein platted shall be held, owned and used only as residential buildings sites provided, however, Lots may be conveyed to the Association and held and used thereafter as Common Property. No structures shall be erected, altered, placed or

permitted to remain on any Lot other than a single detached single-family residence and associated improvements and structures as more particularly permitted herein.

7. **Drainage Areas.** The areas so noted on the Plat are designated as drainage easements, and Declarant hereby donates and dedicates to the owners of Lots within Esculapia Estates the right to use these areas solely for drainage and aesthetic purposes. The Association shall maintain any drainage improvements located in such areas at its sole cost. No Improvements shall be placed on the areas shaded on the Plat unless first approved by the Board of Directors and, if necessary, the appropriate agencies of the Benton County Planning Board.

8. **Common Area.** The areas noted as "Common Area" on the Plat and all improvements thereon, including, but not limited to, all parking areas, roads, retaining walls, Community Boat Docks (as defined in the Declaration), gatehouses and landscaped areas, if any, shall be Common Area (as defined in the Declaration) and maintained by the Association as set forth in the Declaration.

9. **Delegation of Authority.** Declarant shall have the right, but not the obligation, by a written instrument recorded in the Office of the Recorder for Benton County, Arkansas, to delegate, convey and transfer to the Association and/or any successor developer all authority, rights, privileges and duties reserved by Declarant in this Bill of Assurance.

10. **Obligation for Assessments; Membership in Association.** By acceptance of a deed or other conveyance of property covered by this Bill of Assurance, each owner of a lot within Esculapia Estates shall be deemed to (i) acknowledge that such property is subject to the Declaration, and (ii) covenant and agree to pay any assessments, charges and/or special assessments which may hereinafter be levied by the Association. All owners of Lots within Esculapia Estates will be members of Esculapia Estates Property Owners Association, Inc. as provided for in the Declaration.

11. **Setback Requirements.** No residence shall be located on any Lot (i) nearer than forty feet (40') to the front Lot line abutting the street right of way, (ii) nearer to any side Lot line than the greater of (A) twenty feet (20') or (B) ten percent of the length of the front Lot line, and (iii) near than twenty five feet (25') to the rear Lot line, provided a variance from such setback requirements may be granted if approved by majority vote of the Design Review Committee and the Benton County Planning Board, or such other regulatory agency as may succeed to their functions. No principal dwelling shall be located on any lot nearer than 50 feet to the rear lot line. For the purposes of this covenant, roof overhangs, eaves, steps, and porches and walks not under roof shall not be considered as a part of the building.

12. **Minimum Square Feet Area.** No residence shall be constructed or permitted to remain on any Lot in Esculapia Estates unless the finished heated living area, exclusive of porches, patios, garages, breezeways, exterior stairways, porte cocheres, storage areas and outbuildings, shall equal or exceed that shown in the following schedule:

2,500 square feet

Finished heated living area shall be measured in a horizontal plane from the interior face of one outside wall to the interior face of the opposite outside wall on each level. Lofts or

similar areas of a residence containing five hundred or fewer square feet shall not be deemed a "floor" or a "story" for the purposes of this section.

13. **Height of Other Structures.** No structure of any kind, including, but not limited to, any radio or television antenna or tower, shall be built or permitted to remain upon a Lot if the height of such structure is higher than the ridge line of the residence upon such Lot or visible from the street which such residence fronts.

14. **Frontage of Residence on Streets.** Any residence erected on any Lot in Esculapia Estates shall front the principal street adjacent to the Lot and present a good frontage on all abutting streets.

15. **Utilities.** Electrical, telephone and cable television utility lines are or shall be located underground in utility easements and in the rights of way of common streets and roads. Connections from the Lots to the underground utility lines shall be completed at the Lot Owner's expense and shall be underground.

16. **Water and Septic Systems.** Water lines exist underground in utility easements and the rights of way of common streets and roads. Connections from the Lots to the water lines shall be completed at the Lot owner's expense, including any fees and assessments charged by the utility providing such service. All such connections shall comply with all applicable standards of the provider of the service, the State of Arkansas, and any other regulatory agency with jurisdiction. There is no public sewer system available in Esculapia Estates on the date hereof; therefore, each Owner shall be required to install a septic system that is approved by the state and local regulatory agencies on each Lot prior to habitation.

17. **Commercial Structures.** No building or structure of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot. This prohibition shall not apply to any business or structure that may be placed on any Lot or portion of a lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Community.

18. **Outbuildings Prohibited.** No outbuildings or other detached structure appurtenant to the residence may be erected on any Lot without a prior issued Development Permit issued by the Design Review Committee.

19. **Noxious Activity.** No noxious or offensive activity shall be carried on upon any Lot, nor shall any garbage, trash, rubbish, tree limbs, pine straw, leaves or cuttings, ashes or other refuse be thrown, placed or dumped upon any vacant lot, street, road or common areas, nor on any Lot unless placed in a container suitable for garbage pickup; nor shall anything ever be done that may be or become an annoyance or nuisance to the neighborhood. No light that is unreasonably bright or causes unreasonable glare shall be emitted from any Lot. No unreasonably loud or annoying noises or noxious or offensive odors shall be emitted beyond the Lot lines of any Lot.

20. **Trash Storage.** All garbage and trash shall be placed in sanitary capped containers, which shall be located until time for pick-up within an acceptable screened or a

walled-in area so the enclosed area is not visible from any street or adjoining property. Any such screened or walled-in area shall be landscaped to soften its impact.

21. **No Existing Structure or Mobile Home.** No existing, erected building or structure of any sort, including without limitation any structure commonly known as a "mobile home", "house trailer," "manufactured home," or similar structure may be moved onto, placed or used on any Lot.

22. **Temporary Structure.** No trailer, basement, tent, shack, garage, barn or other outbuilding other than a guest house and servants quarters erected on a Lot covered by these covenants shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

23. **Fences.** No fences, enclosure or part of any building of any type or nature whatsoever shall ever be constructed, erected, placed or maintained closer to the front lot line than the building setback line applicable and in effect as to each Lot. No fence shall be constructed without Owner first obtaining a Development Permit issued by the Design Review Committee.

24. **Sight Line Restrictions.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connects them at points 50 feet from the intersection of the street lines, or in the case of a rounded property corner, within the triangle formed by tangents to the curve at its beginning and end, and a line connecting them at points 50 feet from their intersection. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of no lower than eight feet to prevent obstruction of such sight lines. The same sight line limitations shall apply on any Lot within 10 feet of the intersection of the street property line with the edge of a driveway or alley pavement.

25. **Property Lines and Boundaries.** Iron pins have been set on all lot corners and points of curve, and all lot dimensions shown on curves are chord distances, and all curve data as shown on the Plat filed herewith is centerline curve data. In the event of minor discrepancies between the dimensions or distances as shown on the Plat and actual dimensions and distances as disclosed by the established pins, the dimensions and distances shown on the Plat shall control.

26. **Driveway Obstructions.** No obstruction shall be placed in the street gutter. Curbs shall be saw cut at driveways with a diamond blade, and driveway grades lowered to meet the gutterline not more than two inches above the gutter grade.

27. **Lot Subdivision Prohibited; Exception.** No Lot shall be subdivided, provided, however, if an Owner owns two or more Lots contiguous along the Lots' side Lot lines, one of the Lots may, upon the approval of the Design Review Committee and, if necessary, the Benton County Planning Board, be subdivided into not more than two parcels. In no instance shall a primary residence be constructed on a parcel created from a Lot subdivided in accordance with this section unless the owner of the subdivided parcel also owns the adjacent whole Lot. Once subdivided, no parcel of a subdivided Lot shall be conveyed or transferred except (i) in

conjunction with the conveyance of the contiguous whole Lot, (ii) to the owner of the whole Lot adjacent to the subdivided Lot parcel, or (iii) to the Owner of the other subdivided Lot parcel, provided, however, no violation of any setback requirements shall be created by such a conveyance.

28. **Restrictions Run With Land; Right To Enforce.** The restrictions herein set forth shall run with the land and shall bind the present owner, its successors and assigns. All parties claiming by, through or under the Declarant shall be deemed to covenant with the owner of the Lots hereby restricted, and its successors and assigns, to conform to and observe these covenants and restrictions. No covenant or restriction herein shall be personally binding upon any corporation, person or persons, except with respect to breaches committed during its, his or their term of holding title to said land. Declarant, its successors and assigns, and also the owner or owners of any of the Lots hereby restricted, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth, in addition to ordinary legal action for damages and failure by any owner or owners of any Lot or Lots in this addition to observe any of the restrictions herein. Any delay in bringing such action shall, in no event, be deemed to be a waiver of the right to do so thereafter. No waiver of any breach or failure to enforce any obligation of any agreement or provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provisions herein contained. The right to obtain an injunction or other equitable remedy shall be available notwithstanding the availability of an adequate remedy at law. The owner or owners of any Lot against whom an enforcement action is commenced waives the right to assert the availability of an adequate remedy at law as a defense to an injunction or other equitable remedy by accepting title to a Lot restricted hereby.

29. **Modification of Restrictions.** Any and all of the covenants, provisions or restrictions set forth in this Bill of Assurance may be amended, modified, extended, changed or canceled, in whole or in part, by a written instrument signed and acknowledged by the owner or owners of more than ninety percent (90%) in area of the total land contained within Esculapia Estates. Each covenant in this instrument, unless expressly provided otherwise, shall remain in full force and effect until December 31, 2046, after which time each covenant in this instrument shall be automatically extended for successive periods of 10 years unless an instrument terminating the covenants signed by the then owners of sixty-seven percent (67%) of the Lots in Esculapia Estates has been recorded prior to the commencement of any 10-year period. Developer reserves the right, without the consent of the owner of any Lot, to amend or modify any non-material provision of this Bill of Assurance and to correct any typographical, scrivener's, or recording errors occurring in the drafting, execution or recordation of this instrument.

30. **Attorney Fee.** In any legal or equitable proceeding for the enforcement or to restrain the violation of this instrument or any provisions thereof, by reference or otherwise, the prevailing party or parties shall be entitled to attorney fees in such amount as the court finds reasonable. All remedies provided for herein, or at law or equity, shall be cumulative and not exclusive.

31. **Extension.** All covenants for which extension is not otherwise provided in this instrument shall automatically be extended for successive periods of 10 years each unless modified, terminated or cancelled as provided herein.

32. **Severability.** Invalidation of any restriction set forth herein or any part thereof by any order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions or any part thereof as set forth herein, but they shall remain in full force and effect.

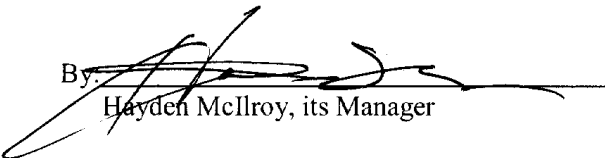
33. **Construction of Instrument.** This Bill of Assurance shall not be construed more strictly against a party merely by virtue of the fact that it may have been prepared by counsel for a party. The headings of various Sections in this Bill of Assurance and all exhibits and attachments hereto are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. Section and Exhibit references are to Sections of and Exhibits to this Bill of Assurance unless otherwise specified. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Bill of Assurance and its exhibits shall, unless otherwise specifically stated, refer to this instrument as a whole and not to any particular provision of this Bill of Assurance.

[SIGNATURES FOLLOW ON IMMEDIATELY SUCCEEDING PAGE]

EXECUTED this 11th day of January, 2006.

DECLARANT:

Beaver Lake Estate, L.L.C.

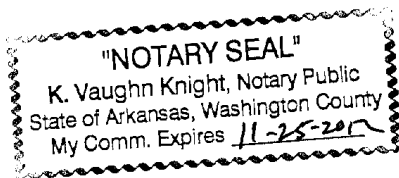
By: 
Hayden McIlroy, its Manager

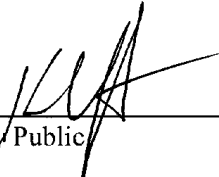
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS
COUNTY OF WASHINGTON)

On January 11, 2006, before me, a duly qualified and acting Notary Public, personally appeared Hayden McIlroy, who acknowledged himself to be the Manager of Beaver Lake Estate, L.L.C., an Arkansas limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained, by signing the name of the limited liability company by himself as such officer.

In witness whereof, I hereunto set my hand and official seal.





Notary Public

My Commission Expires: 11-25-2012

EXHIBIT A
(Property Description)

LEGAL DESCRIPTION

PART OF THE EAST 1/2 OF THE SW 1/4 AND PART OF THE SW 1/4 OF THE NE 1/4 AND PART OF THE SE 1/4 OF SECTION 23, T-19-N, R-29-W, BENTON COUNTY, ARKANSAS DESCRIBED AS BEGINNING AT THE NW CORNER OF THE SE 1/4 OF SAID SECTION 23, THENCE S 87°25'31" E 162.79'; THENCE N 46°24'18" E 455.35'; THENCE S 87°25'23" E 651.76'; THENCE S 43°04'10" E 233.98'; THENCE S 46°37'12" W 227.81'; THENCE S 01°27'39" W 163.96'; THENCE S 87°27'23" E 162.76'; THENCE S 42°54'12" E 232.63'; THENCE S 01°24'47" W 325.60'; THENCE S 56°36'08" W 128.98'; THENCE S 48°50'31" W 145.67'; THENCE S 29°08'07" W 155.54'; THENCE S 20°31'58" W 208.74'; THENCE S 07°13'09" W 161.61'; THENCE S 42°36'49" W 164.63'; THENCE S 39°17'01" W 163.99'; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 7.20', WITH A RADIUS OF 383.68', WITH A CHORD BEARING OF N 50°40'45" W, WITH A CHORD LENGTH OF 7.20', THENCE N 50°08'24" W 141.41'; THENCE THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 312.56', WITH A RADIUS OF 246.79', WITH A CHORD BEARING OF N 86°25'13" W, WITH A CHORD LENGTH OF 292.08', THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 114.72', WITH A RADIUS OF 246.79', WITH A CHORD BEARING OF S 43°58'45" W, WITH A CHORD LENGTH OF 113.69', THENCE S 30°39'37" W 82.64'; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 192.65', WITH A RADIUS OF 623.91', WITH A CHORD BEARING OF S 39°30'34" W, WITH A CHORD LENGTH OF 191.89', THENCE S 48°21'19" W 144.86'; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 5.20', WITH A RADIUS OF 6366.28', WITH A CHORD BEARING OF S 48°19'56" W, WITH A CHORD LENGTH OF 5.20', THENCE N 18°29'49" W 229.93'; THENCE N 25°43'27" W 114.69'; THENCE N 21°28'54" W 209.41'; THENCE N 35°42'51" W 181.33'; THENCE N 20°04'56" W 228.44'; THENCE N 42°36'26" W 312.54'; THENCE N 01°38'02" E 477.05'; THENCE N 01°39'47" E 103.52'; THENCE N 01°35'11" E 79.19'; THENCE N 73°46'48" E 513.28' TO THE POINT OF BEGINNING AND CONTAINING 64.126 ACRES. PROPERTY IS SUBJECT TO THE RIGHT OF WAY OF HIGHWAY 94 ON THE SOUTH SIDE AND BUMBLEBEE LANE AND BAYSIDE DRIVE AS SHOWN HEREON.

EXHIBIT B

DESIGN GUIDELINES AND REQUIREMENTS

for

ESCULAPIA ESTATES

1. Design Standards – General.

Design policies, guidelines and requirements have been formulated in an attempt to promote, improve and maintain the design quality of the individual elements that will make up Esculapia Estates. It is not the intent that these guidelines be used to restrict individual taste or preference but rather to ensure a high standard of environmental beauty and aesthetic quality.

2. Design Duplication.

2.1 The Design Review Committee (the “*Committee*”) encourages Lot owners (individually, an “*Owner*” and collectively, the “*Owners*”) to plan their structures in an original design with emphasis on relationship to existing site conditions and neighboring structures. The Committee encourages all Owners to obtain assistance from architects and other design professionals in planning their homes.

2.2 Exterior design duplication on any one street in Esculapia Estates is prohibited. Design changes will be required to avoid any possible appearance of mass production.

3. Site Planning and Use.

3.1 General. The site design, architecture and landscaping of a Lot should work as a unit. In locating each element or structure on a Lot, every effort shall be made to preserve natural features of the site and to prevent obscuring the principal views of surrounding properties.

3.2 Location of Improvements. The location of structures and improvements should take advantage of existing features of the terrain, changes in grade, tree locations, and orientation to sun and views.

Walks, stairs, terraces, patios, exterior paved areas, fences or walls shall be unobtrusive and shall be designed as an integral part of the overall design.

3.3 Accessory Facilities.

3.3.1 All garbage or trash containers shall be located within an acceptable screened or a walled-in area so the enclosed area is not visible from any street or adjoining

property. Any such screened or walled-in area shall be constructed in such a manner as to limit accessibility and landscaped to soften their impact. Exterior walls of accessory buildings shall be compatible with the materials and integral with the forms of the residence.

3.3.2 No outdoor clothes drying shall be allowed.

3.3.3 Utility and service boxes, miniature TV dishes and similar equipment must be shielded from public view. Exposure to the skyline of utility vent stacks, air handling equipment, etc., shall be reduced to a minimum. All TV antennas must be approved by the Committee. Exterior air conditioning compressors, water softeners, pool mechanical equipment and similar items shall be screened from public view by means of fencing, substantial landscaping or other approved methods.

3.4 Utilities.

3.4.1 All utility lines in Esculapia Estates are installed underground. All service connections from trunk lines and connections within the Lot to accessory buildings and facilities shall be underground. Overhead services will not be permitted except as approved for temporary services during construction.

3.4.2 Meters shall be located in a manner so as to be inconspicuous. Transformers and gas meters shall be appropriately screened from public view.

3.5 Grading and Drainage.

3.5.1 No bulldozing, cutting, clearing or disturbing of any tree four inches or greater in diameter measured three feet above grade, or excavation of lakes or ponds shall be commenced until a Development Permit is issued by the Committee after review and approval of the Final Permit Application showing the nature, kind, shape and location of work.

3.5.2 Cuts and fills should be designed to complement the natural topography of the site. Cut or fill areas shall be replanted with grass, or landscaping or plant materials which shall blend with the landscaping plan or with native vegetation.

3.5.3 Surface drainage shall be designed to employ natural drainage patterns and to avoid adverse impact on neighboring property and the Community Boat Dock. Runoff from impervious surfaces such as roofs and pavement areas shall be directed to natural or improved drainage channels or dispersed into shallow sloping vegetated areas.

3.5.4 Paved areas shall be so designed that surface waters shall be collected at intervals in a manner that will not obstruct the movement of vehicular or pedestrian traffic and will avoid pooling and puddles in paved or swale areas.

3.6 Parking and Circulation.

3.6.1 Site design should accommodate adequate space for off-street parking for residents and guests of each residence. Consideration shall be given to the proper design and location of parking areas, drives, and pedestrian traffic ways with respect to structures, landscaping and shade.

3.6.2 Arrangement of parking areas shall be safe and convenient and shall not detract from the design of the proposed building and neighboring properties. Utilize tree islands, contoured landscape berms and wide landscape strips to eliminate large, unbroken expanses of paving.

3.6.3 Off-street parking is required incidental to residential use. A minimum of two fully enclosed spaces and one outdoor space per bedroom are required. More spaces may be required by the Committee for larger structures.

3.6.4 Automobile entry to all enclosed garages shall be from the rear or side of the Lot. If the Lot is on the corner of intersecting streets, the entry shall be from the secondary street or the rear of the Lot.

3.7 Fencing.

3.7.1 All fences shall be of commercial quality and must be well maintained and shall be of a decorative character. While opaque fencing is discouraged, the use of shrubs and other vegetation along with approved fencing materials for privacy screening is not discouraged. The Committee will review pool area fencing on an individual basis with black wrought iron being the preferred material.

3.8 Pools.

3.8.1 Landscaped pool areas are encouraged. Details pertaining to privacy or visual separation must be included with the application for a Development Permit. Pool equipment should be enclosed or screened from view with consideration given so that equipment noise shall not present a nuisance to neighboring properties.

3.9 Mailboxes.

3.9.1 The Committee has or will design a mailbox for use in Esculapia Estates. No other mailbox shall be used or approved. The Committee will advise Owners where an approved mailbox may be purchased at Owner's expense. Mailboxes are to be located on the curb of the primary street abutting the Lot.

3.10 Chimneys.

3.10.1 Chimneys shall be constructed of brick or stone masonry or metal double-insulated flue pipe covered with wood, stucco, concrete or masonry. Flat tops are

preferred and side venting of the flue (with a flat cap and spark arrestor) is recommended. Exposed metal chimneys are not permitted.

4. Residential Building Area Requirements.

4.1. The minimum square footage requirements for Esculapia Estates are contained in the Bill of Assurance. However, mass and size of the structure is a part of the aesthetic appearance and cannot be isolated from such aesthetics. In approving or disapproving plans for residences, the Committee will consider the square footage as a factor along with the other architectural features of the structure. The square footage set forth in the Bill of Assurance is the minimum requirement, but may be adjusted downward on a case by case basis by the Committee if the Committee, in its sole discretion, determines that the architectural features or aesthetic quality is sufficient to warrant such an adjustment. In the event the Committee determines that there are insufficient architectural features to bring the residence within the aesthetic quality of the proposed neighborhood, the square footage may be required to be adjusted accordingly.

5. Building Construction – General.

5.1 Building Height Restrictions. No residence shall exceed two and one-half (2 ½) stories in height as provided by the Bill of Assurance.

5.2 Exterior Design. The overall building design will be evaluated for aesthetic appearance in terms of the combination of mass, material, texture, color and detail.

5.2.1 The exterior materials and texture should give a feeling of unity. Directional changes and the application of secondary materials for effect must be accomplished with particular skill so that it becomes an integral part of the design concept, not mere exterior surface decoration. The same architectural character and material shall be carried throughout the exterior of the house, thereby giving regard to total design and not just frontal treatment.

5.2.2 Exterior doors, windows and other such openings shall be designed to afford a consistent, harmonious appearance. Vertical and horizontal lines shall be related throughout in the window placement to create paneled effects or to provide pleasing designs; windows should not be arbitrarily placed without regard to the total design. Window types and treatments should be uniform throughout the exterior of the house. For example, if wood shutters are used on the front elevation, they should be used on side elevations as well.

5.2.3 All exterior service elements such as air conditioner compressors shall be shown on the plans and placed in an inconspicuous location.

5.3 Exterior Wall Materials. Exterior wall materials should convey a sense of thoughtful design and well crafted construction. Certain finishes and combinations thereof are more successful than others at conveying these qualities. New building materials as they are developed or become available will be given special consideration provided their use harmonizes with the community development. The following materials may be used for exterior walls:

5.3.1 Primary Wall Materials:

1. Brick,
2. Stone (including limestone and slate),
3. Cedar shake siding;
4. Wood (painted or stained)
5. Stucco (no Dryvit or similar finish systems shall be approved).

5.3.2 Materials where Primary Wall Materials unusable due to location (eaves, dormers, overhangs, etc.)

1. Wood (painted or stained),
2. Concrete hardy board,
3. Stucco (no Dryvit or similar finish systems shall be approved).

The following materials are not considered to be appropriate and are subject to rejection by the Committee: asphalt siding, raw or job painted metal siding, concrete or concrete block as a total façade, transite shingles, log siding, plastics, simulated or imitation (fake) rock, brick, etc. and other products or finishes which gives the appearance of a lack of quality.

5.4 Number of Wall Materials.

5.4.1 Use of multiple exterior wall materials can lend visual interest to a structure. Too many materials can create a garish appearance. Exterior walls in Esculapia Estates should consist of no more than two materials.

5.5 Exterior Color and Finishes.

5.5.1 The use of various colors shall generally be to accent areas. Non-reflective finishes shall be used on exterior surfaces with the exception of finish hardware items. Painted or stained surfaces shall be well maintained.

5.6 Window Materials.

5.6.1 Windows must be constructed of wood or be wood covered.

5.7 Roof Structures.

Because of elevation changes that exist in the topography of Esculapia Estates, roof structures are visible and constitute an important element of a structure. The following roof materials are permitted:

1. Cedar shake,
2. Slate,
3. Concrete tile,
4. Asphalt composition architectural shingles, consistent tone,
5. Terra cotta tile,
6. Concrete shake.

Other roofing materials will be reviewed only on their individual merit, and are subject to rejection.

5.7.2 A minimum roof pitch of 5" in 12" is generally required for the main building area except for architectural styles that require less pitch to maintain authenticity. Flat roofs are not recommended, but will be reviewed on their individual merit.

6. Landscaping.

6.1 Esculapia Estates's natural settings offer a unique environment that should be recognized as a framework for development. The basic objectives of landscaping and revegetation are to preserve the land in its natural state insofar as possible, to enhance the new structures and improvements to strengthen vistas, to direct pedestrian and vehicular traffic, and to screen visually objectionable elements such as service areas, storage yards and utilities from public view.

6.2 Development Permit issuance may be conditioned upon landscaping designed to reduce the visual height of a tall structure, to provide erosion control, or for other reasons. A landscaping plan must be submitted with all Development Permit applications.

6.3 Tree and natural landscape removal shall be performed only to the extent necessary to satisfy the landscape requirements of these Design Guidelines. Ground areas disturbed by grading shall be replanted at the earliest opportunity, or otherwise retained by placement of rip-rap or visually aesthetic material to provide for erosion control.

6.4 All areas outside of a building must be improved and landscaped in accordance with an approved landscaping plan using grass, approved ground cover, shrubs, trees and/or approved alternatives.

6.5 The type and extent of grassing must be shown on landscape plans submitted to the Committee.

6.6 Irrigation facilities shall be provided where necessary for proper landscape maintenance. Irrigation system method shall be shown on the landscape plan.

6.7 No existing tree exceeding four inches in diameter measured at a point three feet from grade shall be cut, removed or otherwise disturbed without prior approval of the Committee.

6.8 Builders and contractors shall exercise great care to minimize the damage to root systems of existing trees. Drip lines of existing trees shall be fenced during construction. Insofar as possible, trenches shall be located in such a way that no tree roots will be damaged. No fires shall be permitted in tree areas; vehicles shall not be parked or driven near trees during construction operations.

6.9 Where fill is placed around trees which are to remain, to such depth so as to cause possible damage or deterioration of the tree, suitable tree wells, root drains, or other acceptable methods shall be used to guarantee the life of the tree.

6.10 Lot owners are encouraged, where possible, to transplant healthy trees requiring removal to other locations in the landscaping plan.

6.11 All landscaping work shall be completed within three months of issuance of a certificate of occupancy.

6.12 No children's outdoor play areas and equipment, including without limitation, swing sets, slides, swimming pools, seesaws, and similar items, shall be constructed, located or placed on a Lot without the prior written approval of the Committee. This requirement shall apply without regard to the material of which the equipment is constructed or its degree of portability. The Committee shall have the right, but not the obligation, to enter a Lot without liability for trespass or conversion and remove any such unapproved equipment or play areas after twenty-four hours written notice to the Lot owner.

7. Signs.

7.1 All signs require the written approval of the Design Review Committee. No signs of a commercial nature will be permitted. All signs must have their own support posts. No sign or any supports or braces for such sign shall be nailed, spiked or otherwise attached to a tree. Such conditions shall apply to all signs, including lettering or designs painted or attached to the surface of a building for advertising or identification purposes.

7.2 All Lots shall have a street number sign located on the mailbox serving the Lot and at the driveway entry. The homeowner's name may be included on the street number sign. Street number signs shall not exceed two square feet in total area.

7.3 Absent affirmative action by the Committee to the contrary, a Lot owner or his agent may place one sign on his or her Lot advertising the property for sale, which sign shall not exceed four square feet in total area. The standard signs of area real estate brokers may be used within Esculapia Estates or the Committee may elect to create a uniform form of sign, designating its size and color, to be used by all Lot owners and real estate brokers for property sales in the neighborhood.

7.4 No political campaign signs may be placed on a Lot or Common Area of Esculapia Estates.

8. Exterior Lighting.

8.1 Exterior lighting shall be used only in areas of pedestrian activity or vehicular traffic, or as a part of an approved, coordinated landscape plan. Indirect lighting shall be used where possible. Exterior lighting shall not be installed where its direct source is visible from neighboring properties or where it produces excessive glare to pedestrian or vehicular traffic. The use of other than white or pale yellow exterior lights will require written approval of the Committee specifically authorizing the color, except for colored lighting used as holiday decoration. The Committee recommends that a professional lighting designer be consulted. Holiday lighting displays shall be illuminated no earlier than six weeks prior to the applicable holiday and shall be turned off and removed from the Lot no later than three weeks after the holiday.

9. Construction Site Requirements.

9.1 All construction sites are to be maintained in a clean and orderly fashion throughout the construction process. Construction materials are to be neatly piled; debris and rubbish are to be contained and periodically removed; tall unsightly weeds are to be routinely cut back; and streets adjoining a construction site are to be frequently swept clean of sand and construction trash.

9.2 Lots neighboring a construction site may not be used for the dumping of construction debris, trash, or excess fill material, gravel, concrete or similar materials.

9.3 Delivery of building materials shall be coordinated to avoid lengthy on-site storage prior to use.

9.4 The proposed location of temporary construction improvements shall be included in the application for a Development Permit and subject to the Committee's approval.

9.5 Portable toilets used during construction shall be located at the rear of the Lot unless prohibited by terrain or Lot grade and shall be removed from the site promptly after completion of work. If location at the rear of the Lot is prohibited as noted above, the portable toilet shall be located out of view from the front of the Lot

10. Design Review.

10.1 Design Review Committee. The Committee derives its existence and authority from the Declaration of Covenants and Restrictions of Esculapia Estates.

10.2 Issuance of Development Permits. Any development, including any alteration of the natural land surface or vegetation, on any Lot or on the Common Properties shall conform to the Covenants and the Bill of Assurance, including these Design Guidelines. A Development Permit issued by the Committee shall be obtained before the commencement of any development on any Lot. The Committee shall issue Development Permits only after the Final Permit Application and other required items have been reviewed and approved.

10.3 Committee Approval. A Final or Preliminary Permit Application may be acted upon in one of three methods: (i) approved (with or without comments); (ii) approved as noted (with comments); or (iii) denied. If denied, a Final or Preliminary Permit Application may be modified and resubmitted without additional fee. The affirmative vote of a majority of the members of the Committee is required for approval of a Final Permit Application and issuance of a Development Permit, and approval of a Preliminary Permit Application. A Final Permit Application shall be deemed approved if the Committee fails to act by written notice on or before forty-five (45) days after a Permit Application and all required information is submitted for final review and approval (a "*Default Approval*"), provided, however, no Default Approval shall be deemed to permit the violation of the Declaration or the Bill of Assurance, including these Design Guidelines, and no Improvement that violates such instruments shall be erected or allowed to remain. Approval of a Preliminary Permit Application shall be for informational and guidance purposes only and shall in no way bind the Committee.

10.4 Limitation on Responsibility and Liability. The primary responsibility of the Committee is to review the Final Permit Application submitted to it to determine if the proposed improvements comply with the Declarations, the Bill of Assurance and the Design Guidelines. The Committee does not review and assumes no responsibility for the following:

- A. The structural adequacy, capacity or safety features of the proposed improvement or structure.
- B. Whether or not the location of the proposed improvement or structure on the building site is free from any possible hazard whether caused by conditions occurring either upon or off of the property.
- C. Soil erosion or soil conditions.
- D. Mechanical, electrical or any other technical design requirements for a proposed project.
- E. Compliance with any building codes, safety requirements, or governmental laws, regulations, codes or ordinances.
- F. Performance or quality of work of any contractor.

By acceptance of a deed to any Lot, the Owner acknowledges the foregoing and waives and releases the Declarant, the Committee and the Board, and all officers, members, employees and agents thereof from any and all liability arising from items for which any of such Persons have not expressly assumed responsibility.

10.5 Expiration of Development Permit; Completion of Construction.

10.5.1 An applicant must commence construction within 180 days after the Committee issues a Development Permit unless the Development Permit expressly provides otherwise. The Development Permit shall be deemed expired and void if no material construction activity has commenced within that time period. If a Development Permit expires, a new Permit Application shall be submitted and approved prior to construction of any Improvements. Any member of the Committee may issue an order temporarily extending the expiration date of a Development Permit until the next regular or special meeting of the Committee, at which time the Committee shall consider a permanent order extending the expiration date. The Committee may extend the expiration date of a Development Permit for a period not to exceed ninety days. Any such extension shall be in writing.

10.5.2 After commencement, construction work must be pursued diligently and continuously and must be completed within a period of eighteen (18) months after the date of the Development Permit. Any requests for time extensions must be made in writing to the Committee. Such requests shall indicate the current status of the project, the reasons for the time extension request and the new date of completion of the project. If construction is not completed within the required time period, or construction is not being diligently pursued, the Committee may withdraw its approval after notice to the Owner and its determination after a hearing that such a violation has occurred. The Owner shall be entitled to notice of the hearing and the right

to offer proof that no violation of this section has occurred. Such hearing shall be held within three Business Days after the date of the foregoing notice to the Owner, or as soon thereafter as is reasonably practicable. If the approval of the Final Permit Application is withdrawn, the Development Permit shall be deemed suspended and the Board or the Declarant may exercise all remedies available to them under the Declaration, the Bill of Assurance or applicable law.

10.6 Appeal. Any decision by the Committee denying a Preliminary or Final Permit Application or approving a Preliminary or Final Permit Application subject to comments or conditions (collectively, a "*Permit Denial*") may be appealed by the applicant to the Board of Directors. To commence an appeal of a Permit Denial, the applicant shall provide written notice of such appeal to the President of the Board and to the chairman of the Committee on or before 9:00 p.m., ten (10) Business Days after the date of the notice of Permit Denial. A decision by the Committee shall be final and unappealable unless a notice of appeal is timely filed by the applicant. The notice of appeal delivered to the Board officer shall include a copy of the denied Permit Application, including all plans, specifications and other items submitted with the application, the response of the Committee denying the subject Permit Application or conditioning approval, and shall state all facts and arguments pertinent to the appeal and such other information as the Board may reasonably request. The Board shall notify the appealing applicant in writing on or before ten Business Days after receipt of the notice of appeal of the time and place for a hearing of the appeal by the Board. Such hearing shall occur within thirty calendar days after the Board's receipt of the notice of appeal. The Board may establish and publish reasonable rules for the conduct of appeal hearings and the content of the notice of appeal and items to be submitted with that notice.

10.7 Application Withdrawal. A Final or Preliminary Permit Application may be withdrawn without prejudice by the applicant as a matter of right; provided the request for withdrawal is made in writing and filed with the Committee prior to any review or action on the application by the Committee. No application may be withdrawn if such application has been reviewed and action, whether preliminary or final, taken by the Committee. An applicant shall be entitled to the return of any Final or Preliminary Permit Application fees upon proper withdrawal of the application.

10.8 Permit Application Review. A Development Permit is issued upon approval by the Committee after the Final Review of an applicant's Final Permit Application. As used in this Bill of Assurance, the term "*Final Review*" shall mean the review by the Committee of the Permit Application submitted by the applicant as the final depiction of the Improvements intended to be constructed or work performed on the Lot (the "*Final Permit Application*"). The Final Permit Application submitted for Final Review shall include the documents and materials described in Section 10.9.1 below. A review by the Committee of an Owner's Preliminary Permit Application (the "*Preliminary Review*") is available. The term "*Preliminary Permit Application*" means a Permit Application containing the documents and materials described in Section 10.9.2 below that describes in somewhat lesser detail the plans and specifications for the Improvements intended to be placed on the Lot. The Preliminary Review process is not mandatory, but is recommended to allow the Owner and the Committee to communicate on matters of concept and basic form prior to the Owner incurring the expense of detailed architectural and engineering drawings, plans and specifications.

10.9 Permit Application Requirements.

10.9.1 *Final Permit Application (Initial Construction or Major Remodeling or Addition).* The Final Permit Application for initial construction of a home or other structure on a Lot or the major remodeling or addition to existing Improvements on a Lot shall include the items set forth below and such other documents, plans, drawings, material and other items reasonably requested by the Committee to describe or allow the Committee to gain a complete understanding of the Improvements proposed by the applicant. The applicant shall submit at least two copies of the Final Permit Application. The Final Permit Application shall include the following:

A. The Final Permit Application form as may be prepared and required by the Committee.

B. A statement by the Owner and his architect, engineer, designer or other qualified person undertaking the design of the proposed Improvements that such parties have visited the site and have reviewed and are familiar with the applicable provisions of the Declaration and the Bill of Assurance, including these Design Guidelines. The Committee may include this statement as part of the Final Permit Application form.

C. A site plan drawn to scale indicating:

1. Name of subdivision, lot, block, address and/or other required legal description of the property, and North directional arrow.
2. Property lines, including streets, rights-of-way, lakes, easements, set back lines and all dimensions.
3. Existing grade and location of proposed cut and/or fill, indicating approximate slope and height or depth of each (2' minimum interval).
4. Proposed building footprint.
5. Proposed septic system footprint.
6. Drainage plans indicating drainage patterns away from building to swales, culverts and other drainage facilities.
7. Parking and paving plans indicating the location of all parking areas, driveways and sidewalks.
8. Location of utility services, including particularly the location of all above-ground equipment such as transformers, risers, meters, sewage grinder pumps and tanks and similar items.
9. Approximate location, size and kind of existing and proposed trees greater than four inches in diameter measured at a point 3 feet above the grade.

10. Location of all structures, retaining walls, garbage and trash containers, decks, terraces, patios and similar outdoor living areas, walks, walls, fences, signs, swimming pools, fountains, air conditioner compressors and other HVAC equipment and components located outdoors, mechanical equipment, and other proposed improvements.
11. Location of contractor's temporary facility, outhouses and other temporary structures and items, to be used during construction.
12. Any temporary access to the site.

D. Floor plans for all floors indicating interior room dimensions and use, the location and size of exterior windows, doors and other openings, the location of mechanical and electrical systems, or any other conceptual plans for which a review is requested by the Committee.

E. Exterior elevations providing the exterior views of all structures, fences, signs and similar Improvements labeled in accordance with the site plan. The elevations shall include a brief description of all exterior materials, colors and finishes, including without limitation those of the walls, roofs, trim, chimneys, doors and windows. Building elevations shall be provided for all sides of the structure.

F. Specifications or color boards as necessary to describe the (i) exterior wall materials and colors; (ii) roof materials and colors; (iii) door materials and colors; (iv) chimney materials; (v) stained or colored pavement materials; (vi) fencing and screening material; and (vii) any other exterior site improvements. Color and material descriptions shall be keyed to the exterior elevations, differentiating between general wall colors, fascia, railing, structural elements, door, trim and accent colors, and other elements of the structure.

G. The landscaping plan indicating proposed plantings (by common and botanical names) and their sizes; exterior lighting system, including decorative, security and other types of illumination (including location and type of lighting fixtures); irrigation system, special landscape features including without limitation ponds and fountains; flower and vegetable gardens; and similar outdoor improvements.

10.9.2 *Preliminary Permit Application (Initial Construction or Major Remodeling or Addition)*. The Preliminary Permit Application for initial construction of a home or other structure on a Lot or the major remodeling or addition to existing Improvements on a Lot shall include the items set forth below and such other documents, plans, drawings, material and other items reasonably the applicant may desire to provide to describe or allow the Committee to gain a complete understanding of the Improvements proposed by the applicant. The applicant shall submit at least two copies of the Preliminary Permit Application. The Preliminary Permit Application shall include the following:

- A. The Preliminary Permit Application form as may be prepared and required by the Committee.

- B. The site plan required under Section 10.9.1(C) above except that the locations and plans required in items 5 through 11 thereof need not be final and may be noted on the site plan as set out for preliminary review purposes only.
- C. Floor plans for all floors indicating anticipated interior room dimensions and use and the location and size of exterior windows, doors and other openings.
- D. Exterior elevations providing the exterior views of all structures, fences, signs and similar Improvements labeled in accordance with the site plan. The elevations shall include a brief description of anticipated exterior materials, colors and finishes, including without limitation those of the walls, roofs, trim, chimneys, doors and windows.
- E. Color and material samples for buildings, exterior walls, roofs and exterior doors.
- F. Surveyed locations of all trees greater than eighteen inches in diameter measured 3 feet above grade.

10.9.3 *Final Permit Application (Minor Remodeling, Exterior Refinishing or Landscape Modification)*. The Final Permit Application for the minor remodeling, exterior refinishing or landscape modification of existing Improvements on a Lot shall include such documents, plans, drawings, materials, surveys and other items reasonably requested by the Committee to describe or allow the Committee to gain a complete understanding of the Improvements or modifications proposed by the applicant. For exterior repainting, it shall be sufficient for the applicant to submit a Permit Application form, a color schedule, color chips and photographs of the Improvements to be repainted. Final Permit Applications for landscape modifications shall initially include photographs of the areas to be modified, and a narrative description of the proposed modifications including the common and botanical names of any plants, shrubs or trees to be installed. The Committee may thereafter request additional site plans, drawings or materials as may be necessary to describe or gain an understanding of the proposed modifications. For other modifications and improvements, applicants shall initially submit final site and floor plans, elevations with material indications, material samples, a color schedule and color chips for Committee consideration and review. The Committee may thereafter request additional site plans, drawings or materials as may be necessary to describe or gain an understanding of the proposed modifications. The applicant shall submit at least two copies of the Final Permit Application.

10.10. Construction Review.

10.10.1 *Site Marking*. Prior to the start of construction, the items set forth below shall be physically marked on the Lot with flags or other markings readily determinable by members of the Committee. The marking shall be performed by or under the supervision of a registered surveyor. The Committee shall have no responsibility for verification and accuracy of property corners, Lot lines, setback lines, building location, the relationship of buildings to natural site features and similar physical attributes of the Lot. Responsibility for such items is

the sole obligation of the Owner, which waives and releases any and all such claims against the Committee and the Association. The following items shall be marked on the Lot:

- A. Lot corners and boundaries.
- B. Setback lines and easement boundaries.
- C. Location of approved structures.
- D. Centerline of approved driveway.
- E. The location of existing and proposed utility lines.
- F. All trees with a trunk diameter of four inches or greater measured three feet above grade proposed for removal.

No trees with a trunk diameter of 4 inches or greater measured three feet above grade shall be removed before being inspected and approved by a member of the Committee or other authorized Committee representative.

10.10.2 *Changes During Construction.* After a Development Permit is issued for the construction or modification of Improvements, all changes to the exterior of the structure or other Improvements, changes in orientation of the Improvement on the Lot, changes in driveway location and parking layout, trees to be removed, signs, and any other changes affecting the appearance of Improvements upon the Lot or to neighboring Lots shall require the prior written approval of the Committee. Changes proposed during the course of construction shall be submitted in writing, and revised plans, if necessary, shall be resubmitted for approval unless otherwise so authorized in writing by the Committee. All structures shall be built in conformity with the Final Permit Application, as modified pursuant to this section.

10.10.3 *Compliance During Construction.* Periodic inspections of construction in progress may be made by the Committee or its representative to determine compliance with its policies and with the Development Permit. If construction differs in any material respect from the Final Permit Application approved by the Committee, the Committee may withdraw its approval after notice to the Owner and its determination after a hearing that a material deviation has occurred. The Owner shall be entitled to notice of the hearing and the right to offer proof that no material deviation from the approved Final Permit Application has occurred. Such hearing shall be held within three Business Days after the date of the notice to the Owner, or as soon thereafter as is reasonably practicable. If the approval of the Final Permit Application is withdrawn, the Development Permit shall be deemed suspended and the Board or the Declarant may exercise all remedies available to them under the Declaration, the Bill of Assurance or applicable law.

11. Variance from Design Guidelines.

11.1 The Committee shall have the power, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Design Guidelines or where creative alternative design solutions are proposed, to vary or modify the applications of

these guidelines relating to the construction or alteration of buildings or structures, so that the spirit of the Design Guidelines and the Covenants governing the Design Guidelines will be observed, safety and welfare secured and substantial justice done.

11.2 The affirmative vote of not less two-thirds (2/3) of the members of the Committee shall be necessary to grant a variance under the provisions of this Section.

11.3 Before a variance shall be granted, the Committee shall make a finding that the conditions in this Section are satisfied by evidence supplied to the Committee by the applicant for the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

11.4 The Committee, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with the Design Guidelines and the Covenants; and a violation of these conditions and safeguards shall be deemed a violation of the Design Guidelines and the Covenants.

11.5 The following shall be considered valid reasons for granting a variance:

11.5.1 That the special conditions and circumstances do not result from the actions of the applicant.

11.5.2 That special or extraordinary circumstances apply to the subject property that do not apply to other building sites at Esculapia Estates.

11.5.3 That the granting of a variance recognizes a creative and positive design solution and the variance will not adversely affect the intent and purpose of the Design Guidelines and Bill of Assurance of Esculapia Estates.

11.5.4 That the design solution proposed by the applicant is as good as or better, given the underlying intent and purpose of the Design Guidelines, than that provided for in the Design Guidelines.

11.6 The Committee may request such additional documentation, reports and other documentary evidence from the applicant as it deems necessary to process the variance application. It shall be the duty of the applicant for development approval to request a variance from the Committee if such is necessary as a result of the applicant's development proposal. If an application is submitted to the Committee that does not request a variance and varies from the requirements of the Design Guidelines, the Committee shall deny such application. If a variance is properly requested, it shall be processed in conjunction with the processing of the entire Design Review application. If the Committee approves a variance and the application of which it is a part, then the Development Permit subsequently issued by the Board shall specifically include and describe the variance.

11.7 This process is for the variance of the Design Guidelines only and not for the variance of the main body of the Covenants.

12. Miscellaneous.

12.1 Removal of water by any means from lakes, ponds, canals or watercourses within Esculapia Estates must be approved by the Association and any governmental agency with jurisdiction.

12.2 Vacant Lots not maintained by the Lot owner will be subject to routine maintenance, if in the opinion of the Committee, such Lot is deemed a nuisance, eyesore, health hazard or environmental problem to a neighboring property. Owners will be responsible for paying the costs of any such maintenance performed on their Lots.

13. Definitions.

13.1 The following terms and phrases used in these Design Guidelines and Requirements shall be defined as follows:

- A. *Bill of Assurance* means the Bill of Assurance of Esculapia Estates, as hereafter modified, amended or supplemented, to which these Design Guidelines are an exhibit.
- B. *Committee* means the Design Review Committee created pursuant to the Declaration.
- B. *Default Approval* shall have the meaning set forth in §10.3 of these Design Guidelines.
- C. *Final Permit Application* shall have the meaning set forth in §10.8 of these Design Guidelines.
- D. *Final Review* shall have the meaning set forth in §10.8 of these Design Guidelines.
- E. *Owner* shall have the meaning set forth in the Bill of Assurance.
- F. *Permit Denial* shall have the meaning set forth in §10.6 of these Design Guidelines.
- H. *Preliminary Permit Application* shall have the meaning set forth in §10.8 of these Design Guidelines.
- I. *Preliminary Review* shall have the meaning set forth in §10.8 of these Design Guidelines.

Benton County, AR
I certify this instrument was filed on
01-18-2006 09:09:18 AM
and recorded in Deed Book
2006 at pages 3173 - 3198
Brenda DeShields-Circuit Clerk