

AMENDMENT TO THE  
DECLARATION OF  
THE ESCALANTE HILLS PROPERTY OWNERS ASSOCIATION, INC.

THIS AMENDMENT to the By-Laws of the Escalante Hills Property Owners Association, Inc. made on the date hereinafter set forth by Frank DeGeorge, President of the Escalante Hills Property Owners Association, Inc.

ARTICLE V

MAINTENANCE ON DWELLING

Now Reads in Part.....the painting, repairs, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways, and private drives and private roads, and other improvements....

Changed to Read.....the painting, repairs, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, and other improvements...

Rational: To eliminate concrete repairs which become the responsibility of the unit owners.

IN WITNESS WHEREOF, we, being all members of THE ESCALANTE HILLS PROPERTY OWNERS ASSOCIATION, INC., said Association being a corporation duly organized, validly existing and in good standing under the laws of the State of Nebraska and having all requisite power and authority to enter into this Amendment and to carry out the transactions contemplated hereby, and all documents delivered or to be delivered in connection herewith, executed by the Association are valid and binding upon the Association and enforceable in according with its terms, have hereunto set our hands this 3 day of

MARCH, 1993.

Lots 101-106

107-110

121-126

170-175

176-179

180-187

Escalante Hills

PSD 3510

3-18-93  
Frank DeGeorge, President

Escalante Hills Replat  
Fred McGarry, Vice President

Marilyn Stamm, Secretary

Sharon Kohler, Treasurer

Ray Forycki, Director

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of THE ESCALANTE HILLS ASSOCIATION, INC., a Nebraska corporation, and,

That the foregoing By-Laws constitute the amended By-Laws of said Association and were duly adopted at a meeting of the Board of Directors, that said meeting was duly called according to the By-Laws of the Association, that a quorum existed among those Association members present, and a necessary percentage of the vote was obtained and that said meeting was held on the 8th day of December, 1992.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 3 day of March, 1993.

  
Marilyn Stamm, Secretary

CASH 5572R BK 1062 R MC-11351 FB MC-11350  
TYPE Misc PG 53-54 CIO COMP SCAN ✓  
FEE 27.00 OF Misc LEGAL PG MC FV ✓

RECEIVED  
MAR 17 1 36 PM '93  
GEORGE J. BOGGS, JR., CLERK  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

MAENNER CO.  
444 Regency Pkwy Dr.  
Omaha, Ne. 68114



74  
BOOK 633 PAGE 242

AMENDMENTS TO DECLARATION

AMENDMENTS TO DECLARATION made on the date hereinafter set forth by more than ninety per cent of the lot owners as of the date hereof.

WITNESS:

WHEREAS, the lot owners, in order to preserve and promote the private residential character of the premises in accordance with the plan of development expressed in the original Declaration and all supplemental Declarations and amendments, are desirous of annexing certain property to said Declarations, supplemental Declarations and amendments, subjecting the premises to all the terms and conditions thereof; and,

WHEREAS, the lot owners, in order to further preserve and promote the character of the premises, are desirous of deleting from the Declarations, supplemental Declarations and amended Declarations certain premises and removing all terms and conditions affecting these premises, except those expressly herein reserved; and,

WHEREAS, the lot owners in Escalante Hills Property Owners Association, Inc., have been charged with certain responsibilities for maintenance of common areas by previous Declarations and are desirous of amending those responsibilities.

NOW, THEREFORE, in consideration of the foregoing preamble, the undersigned declare that the following property shall be annexed and deleted as set forth and further that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of, for addition to and in clarification of the easements, restrictions, covenants and conditions contained in the Declarations and supplemental Declarations to the extent, and only to the extent that the same are inconsistent therewith:

1. That all of Lot 36 and the North 8.2 Feet of Lot 37; irregular easterly 68.06 Feet Lot 37 and the West 48.97 Feet of

Lot 38, Escalante Hills, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, more particularly described in Exhibit "A," is and will be acquired, conveyed, devised, inherited, sold or otherwise transferred, and is and will be occupied and used subject to all and each of the conditions and other items set out in the Declaration of Covenants, Easements, Restrictions and Conditions (hereinafter referred to as "Declarations"), dated August 21, 1972, and recorded at Page 459 through Page 467, inclusive, of Book 513 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, and further subject to all Amendments to Declaration and supplemental Declarations.

2. That Lots 24 through 26, inclusive, and the Northerly 64 Feet of Lot 27, more particularly described in Exhibit "B,"; Lots 44 through 55, inclusive, Escalante Hills, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, are released from all of the covenants, easements, restrictions and conditions (hereinafter referred to as "Declarations"), dated August 21, 1972, and recorded at Page 459 through Page 467, inclusive, of Book 513, of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, and amendments and supplemental Declarations, except this supplemental Declaration, and these lots and portions of lots shall be subject to the easements, covenants and restrictions as set forth herein in Item No. 4 of this Amendment to Declaration.

That Lots 87 through 100, inclusive, Escalante Hills Replat, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, are released from all of the covenants, easements, restrictions and conditions (hereinafter referred to as "Declarations"), dated August 21, 1972, and recorded at Page 459 through Page 467, inclusive, of Book 513, of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska, and amendments and supplemental Declarations.

In consideration of the deletion of the foregoing lots from Escalante Hills Property Owners Association, Inc., and pursuant to

Inc., an assessment on Lots 24 through 61, inclusive, Escalante Hills, a Subdivision in Douglas County, Nebraska. The amount of the assessment shall be determined by the Board of Directors of Escalante Hills Property Owners Association, Inc. The funds collected pursuant to this assessment shall be maintained in a separate account and used exclusively for the maintenance of Lot 62 East. The provisions set forth in Article IV, Sections 7 and 8, of the Declarations shall apply to Lots 24 through 61, inclusive, of Escalante Hills, a Subdivision in Douglas County, Nebraska.

Escalante Hills Property Owners Association, Inc., shall pay, on behalf of those members of Escalante Hills Property Owners Association, Inc., and abutting Lot 62 East, that portion of the maintenance assessment determined to be exclusively for the maintenance of Lot 62 East.

Escalante Hills Property Owners Association, Inc., shall maintain Lot 62 East until such time that written notice is served upon Escalante Hills Property Owners Association, Inc., by eighty per cent of the owners of Lots 24 through 61, inclusive, Escalante Hills, a Subdivision in Douglas County, Nebraska, that they will undertake all obligations of maintenance of Lot 62 East. Upon receipt of written notice by the Board of Directors of Escalante Hills Property Owners Association, Inc., from the required number of abutting property owners to Lot 62 East, Escalante Hills Property Owners Association, Inc., shall be relieved of all responsibility for the maintenance of Lot 62 East; provided, however, that Escalante Hills Property Owners Association, Inc., shall continue to pay, on behalf of their members abutting Lot 62 East, assessments for maintenance, and Escalante Hills Property Owners Association, Inc.'s authority for assessments for maintenance of Lot 62 East shall terminate and become the responsibility of an association of owners of Lots 24 through 61, inclusive, a Subdivision in Douglas County, Nebraska.

IN WITNESS WHEREOF, the undersigned have signed this Amendment to Declaration this 9<sup>th</sup> day of May, 1980.

EXHIBIT "A"

Lot 36 and the North 8.2 Feet of Lot 37; irregular Easterly 68.06 Feet of Lot 37 and the West 48.97 Feet of Lot 38, Escalante Hills, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded more particularly described as follows:

PART OF LOTS 37 AND 38, IN ESCALANTE HILLS, AN ADDITION, IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 38, ESCALANTE HILLS; THENCE N51°55'18"W, (ASSUMED BEARING) ALONG THE SOUTHWESTERLY LINE OF SAID LOT 37, ESCALANTE HILL, A DISTANCE OF 68.06 FEET; THENCE N42°04'24"E, A DISTANCE OF 97.17 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF LARIMORE AVENUE; THENCE SOUTHEASTERLY, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF LARIMORE AVENUE, ON A CURVE TO THE LEFT WITH A RADIUS OF 30.00 FEET, A DISTANCE OF 25.91 FEET SAID CURVE HAVING A LONG CHORD WHICH BEARS S72°40'07"E, A DISTANCE OF 25.11 FEET; THENCE S07°24'26"E, A DISTANCE OF 101.92 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 38, ESCALANTE HILLS; THENCE S83°29'06"W, ALONG SAID SOUTHERLY LINE OF LOT 38, ESCALANTE HILLS, A DISTANCE OF 48.97 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Lots 24 through 26, inclusive, and the Northerly 64 Feet of Lot 27, Escalante Hills, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, more particularly described as follows:

Lots 24 through 26, inclusive, Escalante Hills, and all of Lot 27, Escalante Hills, an addition in the East 1/2 of the NE 1/4 of Section 5, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, except that portion described as follows:

Beginning at the Southwesterly corner of said Lot 27, Escalante Hills; thence  $N00^{\circ}06'05''W$  (assumed bearing) along the Westerly line of said Lot 27, Escalante Hills, a distance of 21.36 feet; thence  $N74^{\circ}07'44''E$ , a distance of 100.85 feet to a point on the Southerly right-of-way line of 111th Circle; thence Southeasterly along said Southerly right-of-way line of 111th Circle, on a curve to the left with a radius of 42.50 feet, a distance of 5.81 feet, said curve having a long chord which bears  $S19^{\circ}47'05''E$ , a distance of 5.81 feet; thence  $66^{\circ}16'55''W$  along the southerly line of said Lot 27, Escalante Hills; a distance of 108.07 feet to the Point of Beginning.



Lot 173

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Robert H. Franck

Wanda M. Franck

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Lot 173 & 10 Ft Lot 63 adj  
Lot 173 on S

\_\_\_\_\_  
Lawrence E. Hynek

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

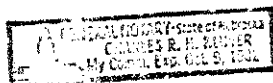
Lot 174 & 10 Ft Lot 63 adj  
Lot 174 on S

Richard N. McCollam  
Richard N. McCollam

Harvey M. Hanson  
Harvey M. Hanson

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

<sup>44</sup>  
The foregoing instrument was acknowledged before me this  
11 day of Dec., 1977, by Richard N. McCollam.



Charles R. H. Kluever  
Notary Public

DECLARATION

THIS DECLARATION, made on the date hereinafter set forth by BLACK AND ELLIOTT DEVELOPMENT COMPANY, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real estate, hereinafter referred to as the "Properties", in the County of Douglas, State of Nebraska, which is more particularly described as:

Lots 170 through 187, inclusive, and Lot 63 in Escalante Hills, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, and

WHEREAS, Declarant is desirous of providing easements, restrictions, covenants and conditions for the use of said premises for the purpose of protecting the value and desirability of said property.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property above described as well as any other property submitted hereto as provided herein, and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof until January 1, 1990, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by written agreement of a two-thirds majority of the then owners of the lots it is agreed to change said covenants in whole or in part, said agreement to be executed and recorded in the manner provided by law for conveyance of real estate.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to ESCALANTE HILLS PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns, a Nebraska non-profit corporation.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of Lot 63 of Escalante Hills, a subdivision in Douglas County, Nebraska, except a portion thereof which is described generally and for purpose of simplicity herein as a ten foot wide strip of ground immediately abutting to the West or front yard line of each of Lots 170 through 187, inclusive, of Escalante Hills, a subdivision in Douglas County, Nebraska.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area upon which shall be erected a dwelling the construction of which shall be at least 80% complete according to the plans and specifications for construction of said dwelling. All other Lots, exclusive of the Common Area, which shall be vacant or upon which shall be erected a dwelling the construction of which shall be less than 80% complete according to the plans and specifications for construction of said dwelling, shall be defined and referred to herein as "Unimproved Lots".

Section 7. "Declarant" shall mean and refer to BLACK AND ELLIOTT DEVELOPMENT COMPANY, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) vote of the members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, guests or tenants.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot within the properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

(a) "Resident Members" shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) "Declarant Members" shall be the Declarant and its assigns, provided said assignment, grant or conveyance to said assigns shall denominate said assignee as a successor Declarant as provided in the By-Laws. The Declarant Member or its successors shall be entitled to four (4) votes for each Lot owned. The Declarant membership shall cease and be converted to Resident membership when the total votes outstanding in the Declarant membership.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation or Assessments. The Declarant, for each fully developed Lot owned within the Properties as defined herein hereby covenants, and each Owner of any Lot be acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular annual assessments or charges, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (3) Special Assessments for Insurance on the Properties. The Regular and Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be and constitute until paid a continuing charge against and lien upon such lot or property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to promote and sustain their social welfare and otherwise provide for their health, pleasure, recreation, safety and other nonprofitable interests by acquiring, maintaining, operating, contributing to the acquisition, maintenance, or operation of, or otherwise making available for use any one or more area entrances or entry structures, swimming pools, tennis courts, and any other recreational equipment, facilities, grounds, or structures, to provide weed and other actual or potential nuisance abatement or control, security service, domestic water supply, and other community services, to provide for exterior maintenance on the homes located on the Properties, to provide architectural control and secure compliance with or enforcement of applicable covenants, easements, restrictions, and similar limitations, and to undertake such other activities appropriate, convenient, or necessary to promote or sustain any such interest.

Section 3. Regular Assessments. Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual Budget of the Working Fund for the then anticipated fiscal affairs and general operations of the Association for that year, and shall levy and collect monthly assessments from each lot on the properties which, considering the revenue derived from Regular Annual assessments on unimproved lots and other sources of income, if any, shall be sufficient to fund the budget for said fiscal year. The regular assessment with respect to all improved lots shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance, and security upon improved lots as opposed to unimproved lots, the regular assessment for each unimproved lot will be equal to the equivalent of 25% of the regular assessment due for each improved lot. The Budget and Assessments

shall be approved and ratified by the Directors at the Annual Meeting prior to any other business to be undertaken at said annual meeting.

Section 4. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto or to defray in whole or in part any extraordinary general expenses of the Association. One-twelfth (1/12) of said assessment shall be due and payable one month from the date of levy with a like sum due and payable each and every month thereafter, along with the Regular Assessment with respect to said Lot, until the said assessment shall be paid in full.

Section 5. Special Assessments For Insurance. In addition to the Regular assessments and Special assessments authorized above, the Association shall levy special assessments on each improved lot for the portion of Insurance premium due with respect to said lot as hereinafter provided in Article IX hereof, which special assessment shall be paid each month along with the Regular Assessment with respect to said Lot.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The Regular annual assessments provided for herein shall commence as to all unimproved Lots on the first day of the month following the conveyance of the Common Area. The Regular annual assessments provided herein as to all improved lots shall commence the first day of the month following the month during which the construction of a dwelling on said lot shall become at least 80% completed according to the plans and specifications for construction of said dwelling. As provided in the By-Laws, the first Regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as provided by law for foreclosure of mortgages. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V

##### MAINTENANCE ON DWELLINGS

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment for exterior maintenance hereunder, including but not in limitation of the foregoing, the painting, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways and private drives and private roads, and other improvements. Exterior maintenance shall not include painting, repair, replacement and care of glass surfaces, doors, garage doors, mechanical garage door openers, or any mechanical equipment such as air conditioning condensers and related appliances and mechanical equipment. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance of repairs shall be added to and become a part of the Regular assessment to which such Lot is subject. The Association, its employees and agents shall have the right to go on any Lot or into or upon any dwelling or any Lot in the properties for the purpose of performing maintenance and is hereby granted a specific easement for such purpose.

#### ARTICLE VI

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board ("Committee"). In the event said Board, or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE VII

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as a dividing wall between separate dwellings constructed upon the lots by Declarant or its assigns as part of the original construction of homes upon the properties shall constitute a party wall to be used by the adjoining landowners as such, notwithstanding the fact that the wall so constructed, through error in construction or settling of the wall, may not be located precisely on the dividing line between the Lots. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, to the extent the same is not covered by insurance, any Owner who has used the wall may restore it and shall have and there is hereby created an easement over the premises of the adjoining landowner for the purpose of construction of said wall, and if the other Owners thereafter make any use of the wall by commencement of construction on his premises adjoining said wall they shall contribute to the cost of restoration thereof in the proportion in which the adjoining owners use the wall without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 3. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be submitted to and determined by a board of three (3) arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within 10 days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator, may have the second arbitrator selected or appointed by a judge of the Douglas County District Court, State of Nebraska, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint the third arbitrator within 10 days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expense of its own Attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

#### ARTICLE VIII

##### GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Committee.

Section 2. Buildings or Uses Other than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within the properties. Provided, however, the prohibition shall not apply:

(a) to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the properties, or

(b) to any portion of a building used for coin operated laundry or dry cleaning equipment for the use of occupants of buildings in the properties, or

(c) to any portion of a building used by Declarant, its licensees or assigns, for a manager's office or a sales office, or by the Association, for its office, or

(d) to any portion of a building leased for residential purposes for a term exceeding one year,

if written permission for such placement, erection or use under (a) or (b) above, is first obtained from the Committee. Permission of the Committee is not required for exception (c) above.

Section 3. Fences, etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the properties except such fences or enclosures as may be authorized by the Committee. No truck, trailer, boat, equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any building site, parking area or street in the properties. Automobiles shall be parked only in designated parking areas as published by the Committee in its Rules and Regulations. No external television or radio antenna shall hereafter be erected on or about any of the building sites or property within the properties; provided, that, with the written approval of the Committee, one or more master television antenna towers may be erected for the benefit and use of all or of a part of the residents of the properties. No clotheslines or clothes hangers may be constructed or used unless completely concealed within enclosed patio areas.

Section 4. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on the properties, nor shall any trash, ash or other refuse be thrown, placed, or dumped upon any vacant building site, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

Section 6. Billboards Prohibited. The construction, placing or maintenance of billboards, advertising boards or structures or "for sale" or "for rent" signs on any building site in the properties is expressly prohibited except that "for sale" or "for rent" signs may be erected by Declarant and "for sale" or "for rent" signs may be placed by others after first obtaining the written consent of the Declarant; provided, however that the permission of Declarant shall not be required hereunder after July 1, 1978.

Section 7. Outbuildings Prohibited. No outbuilding or other attached structure appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Committee.

Section 8. Temporary Structure. No trailer, basement, tent, shack, garage, barn, or other outbuilding shall at any time for human habitation, temporary or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing herein contained shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any



513 466

building site in the properties to be sued during the period of the construction and sale of the properties. Declarant or its assigns may also erect and maintain model homes for sales purposes and rental and lease purposes and may operate such office or offices therein for so long as they deem necessary for the purposes of selling, renting or leasing the properties.

#### ARTICLE IX

##### INSURANCE

Section 1. Basic Coverage. Insurance policies upon the properties including the structures but excluding the furnishings of individual townhouses shall be purchased by and in the name of the Association for the benefit of the Association and the Owners of each Lot as their interests may appear. Provision shall be made for the issuance of certificates of insurance to holders of first mortgages upon individual Lots. The insurance shall cover all buildings and improvements upon the land in an amount equal to the full insurable value thereof as determined annually by the Association, but with co-insurance clauses being permitted. Such coverage shall afford protection against loss by fire and extended coverage hazards. In addition, insurance shall be procured for workmen's compensation coverage and at least \$100,000/\$300,000 B.I. and \$50,000 P.D. public liability insurance covering the properties, the Association and its employees.

Section 2. Additional Coverage. The Association may also procure, if requested by the owner of any Lot, insurance upon the personal property, furnishings and improvements located on the premises by said owner as well as personal liability and such other risks as are ordinarily covered under homeowners insurance. The Association is further empowered to procure such other insurance as the Association may deem advisable from time to time.

Section 3. Special Assessment. The cost of insurance premiums shall be considered in the nature of a special assessment, as hereinabove provided and the Association shall monthly specially assess against each Lot the premium attributable to coverage procured on said Lot under Section 1 and 2 hereof by the Association.

Section 4. Association as Agent. The Association is hereby irrevocably appointed agent for each owner and his mortgagees to adjust all claims arising under insurance policies purchased by the Association on the improvements on the properties and to execute and deliver releases upon payment of claims without joinder by the owner. All insurance proceeds shall be applied by the Association towards repairing the damage suffered; provided that reconstruction or repair shall not be compulsory where the damage exceed two-thirds of the value of the buildings and improvements. In such case should the owner so elect not to rebuild, the proceeds, along with the insurance indemnity, if any, shall be credited to each owner in accordance with his pro-rata share of the loss sustained by the damage or casualty for which the proceeds shall be payable, and said sums shall be first applied towards satisfaction of any recorded first mortgage against each lot, next towards satisfaction of junior recorded liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said premises and the filling and leveling of said lot, and the remainder shall then be paid to such owner. In case the insurance proceeds do not equal the cost of repairs, the excess cost shall be considered a maintenance expense to be assessed and collected by the Association from the owners of the damaged improvements. In cases of over-insurance, any excess proceeds of insurance received shall be credited to the working fund for the Association.

31-  
DECLARATION OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA  
C. HAROLD OSTLER, REGISTER OF DEEDS  
23 DAY OF August 1972

BOOK 513 PAGE 467

Section 5. Additional Insurance. Each lot owner may obtain additional insurance at his expense.

ARTICLE X

ACCESS

The Association shall have the right of access to each dwelling at reasonable hours to inspect and to perform any necessary or emergency work upon all pipes, wires, conduits, ducts, cables, utility lines and any utilities accessible from within any dwelling, and to insure compliance by the owner with all of the owner's duties under this Declaration.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any Amendment must be recorded.

Section 4. Annexation. Additional land within the area described as ESCALANTE HILLS Subdivision, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, may be annexed by the Declarant or its assigns, to the properties without the consent of members of the Association within five (5) years of the date of this instrument by executing and recording with the Register of Deeds of Douglas County, Nebraska, an express written Supplementary Declaration describing such property and extending to each of the lots so annexed all of the conditions and other terms set out in this Declaration with only such complementary additions and modifications as may be appropriate, convenient, or necessary for accommodation of the different character of such property but not inconsistent with the residential character of ESCALANTE HILLS.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand and seal this 21<sup>st</sup> day of August, 1972.

BLACK AND ELLIOTT DEVELOPMENT  
COMPANY, a Partnership

By Leon F. Black  
Leon F. Black, A Partner

By Don W. Elliott  
Don W. Elliott, A Partner

32  
ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA  
23 DAY OF August 1972. M. C. HAROLD COTLER, REGISTER OF DEEDS

BOOK 513 PAGE 468

63/690  
AFFIDAVIT

STATE OF CALIFORNIA )  
                          ) SS  
COUNTY OF San Bernardino

MARTIN E. MASON, being first duly sworn in oath, states that he joined in error with CLAYNE M. MASON in Mortgage to State Securities Company dated February 19, 1954 and recorded in Mortgage Records of Douglas County, Nebraska in Book 1150, Page 579 on March 4, 1954 and also another Mortgage to State Securities Company dated June 2, 1954 and recorded in Mortgage Records of Douglas County, Nebraska in Book 1150, Page 601 on June 21, 1954 covering the following described real estate:

The South 40 Feet of Lot Eight (8), and the North 14 Feet of Lot Nine (9), Block Two (2), Underwood Hills, a Sub-division, as surveyed, platted and recorded in Douglas County, Nebraska,

and said Martin E. Mason further sayeth that he signed on Notes accompanying said Mortgages as an accommodation maker only. At the times of execution of said Mortgages he had no real interest in said property and farther states that he has no interest in said property at this time.

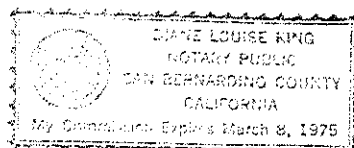
Further, affiant sayeth not.

Martin E. Mason  
Martin E. Mason

Subscribed in my presence and sworn to before me this 11th  
day of August 1972.

Diane Louise King  
Notary Public

My Commission expires 3/8/75



34 ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA 350  
Y3 DAY OF August 1972 AT 1:42P M. C. HAROLD OTTLER, REGISTER OF DEEDS

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SUPPLEMENTARY DECLARATION

THIS SUPPLEMENTARY DECLARATION made May 23, 1973  
by BLACK AND ELLIOTT DEVELOPMENT COMPANY, a partnership,  
hereinafter called "Declarant",

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the following  
described real estate (hereinafter referred to herein as "the  
premises") situated in Douglas County, Nebraska, to-wit:

All of lots 24 through 35, both inclusive; all of  
Lots 42 through 55, both inclusive; Lot 62 and  
Lot 66, Escalante Hills, a Subdivision in Douglas  
County, Nebraska, as surveyed, platted and re-  
corded; and

All of Lots 87 through 110, both inclusive; Lots  
121 through 126, both inclusive, Lots 159 and  
Lot 160 of Escalante Hills Replat, a Subdivision  
in Douglas County, Nebraska, as surveyed, platted  
and recorded,

and

WHEREAS, Declarant, the then owner of Lots 170 through  
187, inclusive, and Lot 63 of Escalante Hills Subdivision in  
Douglas County, Nebraska, in order to preserve and promote  
the private residential character of said Lots in accordance  
with a plan of development expressed therein, made and exe-  
cuted a certain Declaration of covenants, easements, restric-  
tions and conditions (hereinafter referred to as "Declaration")  
dated August 21, 1972 and recorded at Page 459 through  
467 inclusive of Book 513 of the Miscellaneous Records of the  
Register of Deeds of Douglas County, Nebraska, and

WHEREAS, Declarant, in order to preserve and promote the  
private residential character of the premises in accordance  
with the plan of development expressed in said Declaration is  
desirous of annexing the premises to said Declaration and subject-  
ing the premises to all the terms and conditions thereof in  
the manner provided in Section 4 of Article XI of said Declara-  
tion;

NOW, THEREFORE, in consideration of the matters herein  
recited, Declarant does hereby declare as follows, to-wit:

ITEM I.

A. THE PREMISES

1. Residential Property. Certain of the real property  
subject to this Supplementary Declaration and legally described  
as: All of Lots 24 through 35, both inclusive, all of Lots 42  
through 55, both inclusive, Escalante Hills, a Subdivision in  
Douglas County, Nebraska, as surveyed, platted and recorded; and  
all of Lots 87 through 110, both inclusive, Lots 121 through  
126, both inclusive, of Escalante Hills Replat, a Subdivision  
in Douglas County, Nebraska as surveyed, platted and recorded  
and will be acquired, conveyed, devised, inherited, sold or  
otherwise transferred and is and will be occupied and used  
subject to all and each of the conditions and other terms set

out in this Supplementary Declaration and, pursuant to Section 4 of Article XI thereof, to all conditions and other terms imposed upon any "Lot", as therein defined at Section 5 of Article I thereof in said Declaration, with the express additions and modifications set out in this Supplementary Declaration.

B. COMMON AREA

2. Covenants. Certain of the real property subject to this Supplementary Declaration and legally described as Lots 62 and 66 of Escalante Hills, a Subdivision in Douglas County, Nebraska and Lots 159 and 160 of Escalante Hills Replat, a Subdivision in Douglas County, Nebraska (hereinafter referred to as "Common Area") is and will be acquired, conveyed, devised, inherited, sold or otherwise transferred and is and will be occupied and used subject to all and each of the conditions and other terms set out in this Supplementary Declaration and pursuant to Section 4 of Article XI thereof, to all conditions and other terms imposed upon any "Lot" as therein defined at Section 5 of Article I thereof in said Declaration with the express additions and modifications set out in this Supplementary Declaration; provided, however, that said Common Area will be and become common area as that term is defined in Section 4 of Article I of said Declaration and will be and become subject to each and every restriction, easement and condition therein imposed upon the common area by said Declaration or as amended by Amendments to Declaration.

3. Association. The involved property is and will be through January 1, 1990, or for such longer or other period as may otherwise be fixed included in membership in Association as a benefit or burden running with and charge upon the ownership of each lot, pursuant to Article I through Article VII, inclusive of said Declaration or as amended by Amendments to said Declaration.

4. Extension, Modification, Termination: Association will have the right by an express written Permit for the purpose of avoiding undue hardship to waive partly or wholly the application to any lot of any covenant; and Association will have the right in the manner set out in its Articles of Incorporation or its By-Laws, as from time to time amended, at any time or from time to time to extend, modify, or terminate all or any part or parts of this Supplementary Declaration.

IN WITNESS WHEREOF, Declarant has executed this Supplementary Declaration at Omaha, Douglas County, Nebraska.

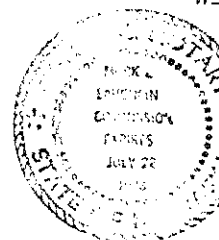
BLACK AND ELLIOTT DEVELOPMENT  
COMPANY, a partnership

By: [Signature] Partner  
Witness: [Signature]  
Witness: [Signature] Partner

STATE OF  
COUNTY OF

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personall

dated the  
thereof t



STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

Before me, a Notary Public qualified for said county, personally appeared LEON F. BLACK and DON W. ELLIOTT, known to me to be the identical persons who executed the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial seal on May 23,, 1973.



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DATE OF DEATH - MONTH, DAY, YEAR  
September 8, 1972

COUNTY OF DEATH  
Douglas

IN OTHER, GIVE STREET AND NUMBER  
at

USE (IF WIFE, GIVE MARRIED NAME)  
Wagner

IN INDUSTRY  
it Company

STREET AND NUMBER  
609 No. 42nd Street

CITY OR TOWN, STATE, ZIP  
Omaha, Nebraska 68131

APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH  
about 1 week

known 4 yrs

AUTOPSY (YES OR NO)  
NO

IF YES, WERE FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH  
NO

DEATH OCCURRED AT THE PLACE, ON THE DATE, AND, TO THE BEST OF YOUR KNOWLEDGE, DUE TO THE CAUSE(S) STATED  
8, 1972 10:40 PM

DATE SIGNED - MONTH, DAY, YEAR  
12 Sept. 1972

STATE  
Nebraska

CITY OR TOWN  
Omaha

DATE RECEIVED BY LOCAL AGENCIES  
SEP 13 1972

If the Certificate  
state of Nebraska.  
r 1972.

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POOR INSTRUMENT FILED  
BOOK 522 PAGE 561

AMENDMENTS TO DECLARATION

THESE AMENDMENTS TO DECLARATION made on the date herein-  
after set forth by BLACK AND ELLIOTT DEVELOPMENT COMPANY, the  
owner as of the date hereof of the following described real  
estate:

All of Lots 24 through 35, both inclusive, all of  
Lot 42 through 55, both inclusive, and all of Lots  
62, 66, 171 through 173, inclusive, Lots 175, 177,  
180 and 184 through 187, inclusive, of Escalante  
Hills, a subdivision in Douglas County, Nebraska, as  
surveyed, platted and recorded; all of Lots 87  
through 110, both inclusive, all of Lots 121 through  
126, both inclusive, and all of Lots 159 and 160, of  
Escalante Hills Replat, a subdivision in Douglas  
County, Nebraska, as surveyed, platted and recorded.

WITNESSETH:

WHEREAS, Declarant caused to be executed a certain Declara-  
tion, dated August 21, 1972, and filed at Page 459 through Page  
467, inclusive, of Book 513 of the Miscellaneous Records in the  
office of the Register of Deeds of Douglas County, Nebraska con-  
cerning the following described real estate, to-wit: Lots 170  
through 187, inclusive, and Lot 63 in Escalante Hills, a sub-  
division in Douglas County, Nebraska, as surveyed, platted and  
recorded; and

WHEREAS, Declarant, in the manner provided in said Declara-  
tion, did annex to said Declaration certain real estate extend-  
ing to each lot so annexed all terms and conditions of said  
Declaration which Supplementary Declaration was dated May 1,  
1973 and filed at Page 1 through Page 1, inclusive, of  
Book 513 of the Miscellaneous Records in the office of the  
Register of Deeds of Douglas County, Nebraska; and

WHEREAS, Declarant is the owner of 90% of the lots subject  
to said Declaration and it is the desire of Declarant to make  
certain amendments, additions and clarifications to said coven-  
ants for the purpose of protecting the value and desirability  
of all of said real estate,

NOW, THEREFORE, in consideration of the foregoing premises,  
the undersigned declares that the following covenants, restric-  
tions, covenants and conditions as herein expressed shall apply  
in amendment of, for addition to and in clarification of the  
covenants, restrictions, covenants and conditions contained in  
said Declaration to the extent and only to the extent that the  
same are inconsistent therewith:

ITEM I

That Article I of said Declaration shall be amended in the  
following particulars to read in its entirety as follows, to-wit:

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to  
ESCALANTE HILLS PROPERTY OWNERS ASSOCIATION, INC., its  
successors and assigns, a Nebraska non-profit corpora-  
tion.

Section 2. "Owner" shall mean and refer to the  
person, firm, whether one or more persons or entities,  
of a legal title to any lot which is a part of  
the property, including contract sellers, but ex-  
cluding those having such interest merely as security  
for the performance of an obligation.

Section 3. "Property" shall mean and refer to  
that certain real property heretofore described,  
and such additions thereto as may hereinafter be  
brought within the jurisdiction of the Association.

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Section 4. "Common Area" shall mean all real property to be owned by Sanitary and Improvement District No. 235 of Douglas County, Nebraska and maintained by the Association for the common use and enjoyment of all property owners within said district and which property is legally described as follows, to-wit:

All of Lot Sixty-Three (63), Escalante Hills, a subdivision located in part of the East One-Half (E½) of the Northeast Quarter (NE¼) of Section 5, Township 15 North, Range 12, East of the 6th P.M., Douglas County, Nebraska, except for the following described tracts of land:

Beginning at the Northwest corner of Lot 187, of said Escalante Hills; thence South 00° 11'25" West, (assumed bearing), along the West line of Lots 187, 186, 185, 184, 183, 182, 181 and 180, of said Escalante Hills, a distance of 208.00 feet to the Southwest corner of said Lot 180, Escalante Hills; thence North 89°48'35" West a distance of 10.00 feet; thence North 00°11'25" East, a distance of 208.00 feet; thence South 89°48'35" East, a distance of 10.00 feet to the point of beginning.

Beginning at the Northwest corner of Lot 179, of said Escalante Hills; thence South 17°10'37" West, (assumed bearing), along the Westerly line of Lots 179, 178, 177 and 176 of said Escalante Hills, a distance of 104.00 feet to the Southwest corner of said Lot 176, Escalante Hills; thence North 72°49'23" West, a distance of 10.00 feet; thence North 17°10'37" East, a distance of 104.00 feet; thence South 72°49'23" East, a distance of 10.00 feet to the point of beginning.

Beginning at the Southwest corner of Lot 170, of said Escalante Hills; thence South 62°18'35" East (assumed bearing), along the Southerly line of Lots 170, 171, 172, 173, 174 and 175 of said Escalante Hills, a distance of 156.00 feet, to the Southeast corner of said Lot 175, Escalante Hills; thence South 27°41'25" West, a distance of 10.00 feet; thence North 62°18'35" West, a distance of 156.00 feet; thence North 27°41'25" East a distance of 10.00 feet to the point of beginning, and

All of Lot 62 and all of Lot 66 Escalante Hills, a subdivision in Douglas County, Nebraska, and

All of Lot 159 and all of Lot 160, Escalante Hills Replat, a subdivision in Douglas County, Nebraska.

The common area above-described shall be maintained by the Association for park and recreation purposes for the benefit of the Association said maintenance to be performed at the cost of said Association during the period of time that these covenants shall be in force with respect to any parcel of the above described real estate.

#### ITEM 11

That Article III of said Declaration shall be amended so that after amendment said Article III shall read in its entirety as follows, to-wit:



## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot within the properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

(a) "Resident Members" shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) "Declarant Members" shall be the Declarant and its assigns, provided said assignment, grant or conveyance to said assigns shall denominate said assignee as a successor Declarant as provided in the By-Laws. The Declarant Member or its successors shall be entitled to four (4) votes for each Lot owned. The Declarant membership shall cease and be converted to Resident membership when the total votes outstanding in the Declarant membership are equal to the total votes outstanding in the Resident membership.

## ITEM III

This Article IX of said Declaration shall be amended so that after amendment said Article IX shall read in its entirety as follows, to-wit:

## ARTICLE IX

## INSURANCE

Section 1. Basic Coverage. Insurance policies upon the properties including the structures but excluding the furnishings of individual townhouses shall be purchased by and in the name of the Association for the benefit of the Association and the Owners of each lot as their interests may appear. Provision shall be made for the issuance of certificates of insurance to holders of first mortgages upon individual lots. The insurance shall cover all buildings and improvements upon the land originally constructed thereon by Declarant in an amount equal to the full insurable value thereof as determined annually by the Association, but with co-insurance clauses being permitted. Such coverage shall afford protection against loss by fire and extended coverage hazards. Unless specifically requested by the owner of any lot, the Association need not procure insurance covering any additional improvements made to the premises by any owner subsequent to the original purchase of said lot from the declarant. In addition, insurance shall be procured for workmen's compensation coverage and at least \$100,000/\$300,000 B.L. and \$50,000 P.D. public liability insurance covering the properties, the Association and its employees.

Section 2. Additional Coverage. The Association may also procure, if requested by the owner of any lot, insurance upon the personal property, furnishings and improvements located or constructed on the premises by said owner as well as personal liability insurance. The Association is further empowered to procure such other insurance as the Association may deem advisable from time to time.

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Section 3. Special Assessment. The cost of insurance premiums shall be considered in the nature of a special assessment, as hereinabove provided and the Association shall monthly specially assess against each Lot the premium attributable to coverage procured on said Lot under Section 1 and 2 hereof by the Association.

Section 4. Association as Agent. The Association is hereby irrevocably appointed agent for each owner and his mortgagees to adjust all claims arising under insurance policies purchased by the Association on the improvements on the properties and to execute and deliver releases upon payment of claims without joinder by the owner. All insurance proceeds shall be applied by the Association towards repairing the damage suffered; provided that reconstruction or repair shall not be compulsory where the damage exceed two-thirds of the value of the buildings and improvements. In such case should the owner so elect not to rebuild, the proceeds, along with the insurance indemnity, if any, shall be credited to each owner in accordance with his pro rata share of the loss sustained by the damage or casualty for which the proceeds shall be payable, and said sums shall be first applied towards satisfaction of any recorded first mortgage liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said premises and the filling and leveling of said lot, and the remainder shall then be paid to such owner. In case the insurance proceeds do not equal the cost of repairs, the excess cost shall be considered a maintenance expense to be assessed and collected by the Association from the owners of the damaged improvements. In cases of over-insurance, any excess proceeds of insurance received shall be credited to the working fund for the Association.

Section 5. Additional Insurance. Each lot owner may obtain additional insurance at his expense.

ITEM IV

That except as hereinabove amended, all other provisions of said Declaration are to remain in full force and effect with said exception, and the undersigned hereby ratify each and every provision of said Amendments to Declaration.

IN WITNESS WHEREOF, the undersigned hereunto set their hands and seals this 22 day of July, 1971.

BLACK AND ELLIOTT INVESTMENTS  
COMPANY, a partnership

By Leon F. Black, Partner

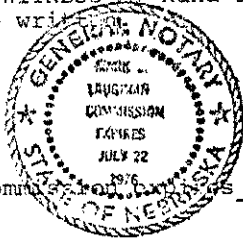
By Don W. Elliott, Partner

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

Before me, a Notary Public, in and for said county and state, personally came LEON F. BLACK and DON W. ELLIOTT, to me known to be the identical persons who executed the

above and foregoing Amendments to Declaration, and they acknowledged the same to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year first above written



Mark L. Laughlin  
Notary Public

My commission expires 7-22-76

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THE STATE OF NEBRASKA  
Douglas County

Entered in Numerical Index and filed  
for Record in the office of the Register  
of Deeds of said County and recorded in

Book 522 of Deeds  
Page 561

C. Harold Ostler  
REGISTER OF DEEDS

By 3 Weirback & Laughlin  
MAR 29 1976  
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contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by Sanitary and Improvement District No. 235 of Douglas County, Nebraska, for the exclusive common use and enjoyment of the owners for so long as said owners shall maintain said common area, and which common area is legally described as set forth in the second preamble hereto.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Black & Elliott Development Company, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the owners shall continue to maintain said Common Area as open green area, and shall plant and maintain in good condition grass, trees and shrubbery within said area as shall be determined by the Association and SID.

Section 2. Delegation of Use. Any owner may delegate in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1979.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owner within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Seven and 50/100ths Dollars (\$7.50) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than five per cent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased above five per cent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments:  
Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the deed from Developer. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six per cent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.  
 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.



## ARTICLE V

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE VI

## GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically

extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6<sup>th</sup> day of May, 1976.

BLACK & ELLIOTT DEVELOPMENT  
COMPANY,

By Leon F. Black PARTNER  
Don W. Elliott PARTNER

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 6<sup>th</sup> day of May, 1976, before me, a Notary Public in and for said County and State, personally appeared Leon F. Black, Partner of Black & Elliott Development Company, and Don W. Elliott, Partner of Black & Elliott Development Company, who are personally known to me to be the identical persons who subscribed the foregoing Declaration of Covenants, Conditions and Restrictions and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said corporation.

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BOOK 564 PAGE 599

WITNESS my hand and Notarial Seal at Omaha in said County,  
this 6 day of May, 1976.



Mark Laughlin  
Notary Public

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BOOK 564 PAGE 389

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Black & Elliott Development Company, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the County of Douglas, State of Nebraska, which is more particularly described as:

All of Lots 1 through 44, inclusive, of Escalante Hills Replat II, a replat of Lot 67, Escalante Hills, a subdivision, in Douglas County, Nebraska.

All of Lots 1 through 23, inclusive, of Escalante Hills subdivision, a subdivision in Douglas County, Nebraska.

All of Lots 1 through 50, inclusive, 55 through 86, inclusive, 111 through 120, inclusive, and 127 through 158, inclusive, of Escalante Hills Replat, a subdivision in Douglas County, Nebraska, and

WHEREAS, Sanitary and Improvement District No. 235 of Douglas County, Nebraska, hereinafter referred to as "SID" is the owner of certain property, hereinafter referred to herein as the "Common Area" and which property is located in Douglas County, Nebraska, and is legally described as follows, to-wit:

That part of Lot 159, of Escalante Hills Replat, a subdivision as surveyed, platted and recorded, lying within the following described boundary, to-wit:

Beginning at the point of intersection of the Southerly right-of-way line of Grande Avenue and the Easterly right-of-way line of 112th Street; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the left with a radius of 224.27 feet a distance of 44.43 feet, said curve having a long chord which bears S61°34'07"E (assumed bearing) a distance of 44.35 feet; thence S67°15'00"E, along said Southerly right-of-way line of Grande Avenue, a distance of 90.00 feet; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the right with a radius of 335.00 feet a distance of 137.62 feet; thence S43°42'48"E, along said Southerly right-of-way line of Grande Avenue, a distance of 105.00 feet; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the left with a radius of 592.31 feet a distance of 300.22 feet, said curve having a long chord which bears S56°08'12"E a distance of 297.87 feet; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue on a curve to the right with a radius of 383.65 feet,

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a distance of 157.35 feet, said curve having a long chord which bears S56°48'35"E a distance of 156.25 feet; thence S44°56'25"W, a distance of 253.64 feet; thence S17°42'13"E a distance of 268.06 feet; thence S64°54'37"W a distance of 502.61 feet; thence S05°00'53"W a distance of 115.00 feet to a point on the Northeasterly right-of-way line of Larimore Avenue; thence Northerly, along said Northeasterly right-of-way line of Larimore Avenue, on a curve to the right with a radius of 323.91 feet a distance of 481.59 feet, said curve having a long chord which bears N42°23'27"W a distance of 438.44 feet to a point on said Easterly right-of-way line of 112th Street; thence along said Easterly right-of-way line of 112th Street on the following described courses; thence N00°12'10"E a distance of 611.79 feet; thence Northeasterly on a curve to the right with a radius of 239.37 feet a distance of 168.35 feet; thence N40°30'00"E a distance of 175.09 feet to the Point of Beginning.

and

That part of Lot 62 of Escalante Hills, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, which is legally described as follows:

Beginning at the Southwesterly corner of said Lot 9, Escalante Hills; thence N67°14'54"E (assumed bearing), along the Southerly line of said Lot 9, Escalante Hills, a distance of 164.63 feet to a point on the Westerly right-of-way line of 112th Street, said point also being the Southeasterly corner of said Lot 9, Escalante Hills; thence Southeasterly, along said westerly right-of-way line of 112th Street, on a curve to the left with a radius of 373.91 feet a distance of 46.47 feet, said curve having a long chord which bears S26°18'36"E a distance of 46.41 feet, to the Northwesterly corner of said Lot 10, Escalante Hills; thence S60°07'54"W, along the Westerly line of said Lot 10, Escalante Hills, a distance of 80.94 feet to the Southwesterly corner of said Lot 10, Escalante Hills; thence S12°35'01"W, along the Westerly line of said Lots 11 and 12, Escalante Hills; a distance of 134.20 feet to the Southwesterly corner of said Lot 12, Escalante Hills; thence S00°06'05"E, along the West line of said Lots 13 thru 16, Escalante Hills, a distance of 282.50 feet to the Southwest corner of said Lot 17, Escalante Hills; thence N89°53'55"E, along the South line of said Lots 17 and 18, Escalante Hills, a distance of 240.00 feet to the Southeast corner of said Lot 18, Escalante Hills; thence N00°06'05"W, along the East line of said Lots 19 thru 22, Escalante Hills, a distance of 282.50 feet to the Northeast corner of said Lot 22, Escalante Hills; thence N27°13'15"E, along the Easterly line of said Lot 23, Escalante Hills, a distance of 27.64 feet to a point on the Southerly right-of-way line of Larimore Avenue, said point also being the Northeasterly corner of said Lot 23, Escalante Hills; thence Southeasterly, along said Southerly right-of-way line of Larimore Avenue on a curve to the left with a radius of 373.91 feet a distance of 14.57 feet, said curve having a long chord which bears S63°53'44"E a distance of 14.57 feet; thence S24°59'17"W a distance of 46.71 feet; thence S00°06'05"E a distance of 333.31 feet, to a point on the South line of said Lot 62, Escalante Hills; thence S89°53'55"W, along said South line

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of Lot 62, Escalante Hills, a distance of 321.35 feet to a point on the West line of said East 1/2 of the NE 1/4 of Section 5, said point also being the Southwest corner of said Lot 62, Escalante Hills; thence N00°12'10"E, along said West line of the East 1/2 of the NE 1/4 of Section 5, a distance of 506.90 feet to the Point of Beginning.

and

Lot 66 of Escalante Hills, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

and

Lot 160, Escalante Hills Replat, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, and

WHEREAS, all of said Common Area owned by SID, as aforesaid was dedicated for park purposes for the exclusive use and enjoyment of the residents of SID for so long as they shall maintain said area, and

WHEREAS, Declarant is desirous of establishing an association of homeowners for the purpose of maintaining said Common Area and is desirous of establishing certain protective covenants to enhance the desirability of said area for residential purposes.

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

#### ARTICLE I

##### DEFINITIONS

Section 1. "Association" shall mean and refer to Escalante Hills Homeowners Association II, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, Black & Elliot Development Company, as the Declarant, placed of record certain Covenants, Conditions and Restrictions on certain property in the County of Douglas, State of Nebraska, which is more particularly described as follows:

All of Lots 1 through 44, inclusive, of Escalante Hills Replat II, a replat of Lot 67, Escalante Hills, a subdivision, in Douglas County, Nebraska.

All of Lots 1 through 23, inclusive, of Escalante Hills subdivision, a subdivision in Douglas County, Nebraska.

All of Lots 1 through 50, inclusive, 55 through 86, inclusive, 111 through 120, inclusive, and 127 through 158, inclusive, of Escalante Hills Replat, a subdivision in Douglas County, Nebraska, and

WHEREAS, the said above-referred to Covenants, Conditions and Restrictions established an association of homeowners for the purpose of maintaining the "Common Area" owned by Sanitary and Improvement District No. 235 of Douglas County, Nebraska, which is legally described as follows, to wit:

That part of Lot 159, of Escalante Hills Replat, a subdivision as surveyed, platted and recorded, lying within the following described boundary, to-wit:

Beginning at the point of intersection of the Southerly right-of-way line of Grande Avenue and the Easterly right-of-way line of 112th Street; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the left with a radius of 224.27 feet a distance of 44.43 feet, said curve having a long chord which bears S61°34'07"E (assumed bearing) a distance of 44.35 feet; thence S67°15'00"E, along said Southerly right-of-way line of Grande Avenue, a distance of 90.00 feet; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the right with a radius of 335.00 feet a distance of 137.62 feet; thence S43°42'48"E, along said Southerly right-of-way line of Grande Avenue, a distance of 105.00 feet; thence Southeasterly, along said Southerly right-of-way line of Grande Avenue, on a curve to the left with a radius of 692.31 feet a distance of 300.22 feet, said curve having a long chord which bears S56°08'12"E a distance of 297.87 feet; thence Southeasterly, along said Southerly right-of-way line of Grande

Avenue on a curve to the right with a radius of 383.65 feet, a distance of 157.35 feet, said curve having a long chord which bears S56°48'35"E a distance of 156.25 feet; thence S44°56'25"W, a distance of 253.64 feet; thence S17°42'13"E a distance of 268.06 feet; thence S64°54'37"W a distance of 502.61 feet; thence S05°00'53"W a distance of 115.00 feet to a point on the North-easterly right-of-way line of Larimore Avenue; thence Northerly, along said Northeasterly right-of-way line of Larimore Avenue, on a curve to the right with a radius of 323.91 feet a distance of 481.59 feet, said curve having a long chord which bears N42°23'27"W a distance of 438.44 feet to a point on said Easterly right-of-way line of 112th Street; thence along said Easterly right-of-way line of 112th Street on the following described courses: thence N00°12'10"E a distance of 611.79 feet; thence Northeasterly on a curve to the right with a radius of 239.37 feet a distance of 168.35 feet; thence N40°30'00"E a distance of 175.09 feet to the Point of Beginning.

and

That part of Lot 62 of Escalante Hills, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, which is legally described as follows:

Beginning at the Southwesterly corner of said Lot 9, Escalante Hills; thence N67°14'54"E (assumed bearing), along the Southerly line of said Lot 9, Escalante Hills, a distance of 164.63 feet to a point on the Westerly right-of-way line of 112th Street, said point also being the Southeasterly corner of said Lot 9, Escalante Hills; thence Southeasterly, along said westerly right-of-way line of 112th Street, on a curve to the left with a radius of 373.91 feet a distance of 46.47 feet, said curve having a long chord which bears S26°18'36"E a distance of 46.41 feet, to the Northwesterly corner of said Lot 10, Escalante Hills; thence S60°07'54"W, along the Westerly line of said Lot 10, Escalante Hills, a distance of 80.94 feet to the Southwesterly corner of said Lot 10, Escalante Hills; thence S12°35'01"W, along the Westerly line of said Lots 11 and 12, Escalante Hills; a distance of 134.20 feet to the Southwesterly corner of said Lot 12, Escalante Hills; thence S00°06'05"E, along the West line of said Lots 13 thru 16, Escalante Hills, a distance of 282.50 feet to the Southwest corner of said Lot 17, Escalante Hills; thence N89°53'55"E, along the South line of said Lots 17 and 18, Escalante Hills, a distance of 240.00 feet to the Southeast corner of said Lot 19, Escalante Hills; thence N00°06'05"W, along the East line of said Lots 19 thru 22, Escalante Hills, a distance of 282.50 feet to the Northeast corner of said Lot 22, Escalante Hills; thence N27°13'15"E, along the Easterly line of said Lot 23, Escalante Hills, a distance of 27.64 feet to a point on the Southerly right-of-way line of Larimore Avenue, said point also being the Northeasterly corner of said Lot 23, Escalante Hills; thence Southeasterly, along said Southerly right-of-way line of Larimore Avenue on a curve to the left with a radius of 373.91 feet a distance of 14.57 feet, said curve having a long



chord which bears S63°53'44"E a distance of 14.57 feet; thence S24°59'17"W a distance of 46.71 feet; thence S00°06'05"E a distance of 333.31 feet, to a point on the South line of said Lot 62, Escalante Hills; thence S89°53'55"W, along said South line of Lot 62, Escalante Hills, a distance of 321.35 feet to a point on the West line of said East 1/2 of the NE 1/4 of Section 5, said point also being the Southwest corner of said Lot 62, Escalante Hills; thence N00°12'10"E, along said West line of the East 1/2 of the NE 1/4 of Section 5, a distance of 506.90 feet to the Point of Beginning.

and

Lot 66 of Escalante Hills, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded.

and

Lot 160, Escalante Hills Replat, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, and

WHEREAS, the said above-referred to Covenants, Conditions and Restrictions were recorded in Book 564 at Page 589, of the Miscellaneous Records of Douglas County, Nebraska, said Covenants, Conditions and Restrictions hereinafter referred to as "Covenants," and

WHEREAS, this Declarant, Nebraska Service Corporation, a Nebraska Corporation, is the successor and assign of Black and Elliot Development Company, and is the owner of the above-described lots, exclusive of the "Common Area," and

WHEREAS, Article V of the Covenants, provided as follows:

#### "ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its

designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with."

WHEREAS, the undersigned, Nebraska Service Corporation, a Nebraska Corporation, this Declarant, now desires to supplement the said Covenants, pursuant to Article VI, section 3, by deleting Article V as hereinabove set forth and substituting in its place new Architectural Control standards on said lots in order to enhance the desirability of said lots for residential purposes.

NOW THEREFORE, this Declarant, Nebraska Service Corporation, a Nebraska Corporation, does hereby supplement said Covenants with respect to the above-described lots and recorded in Book 564 at Page 589 of the Miscellaneous Records of Douglas County, Nebraska, by deleting Article V Architectural Control of the Covenants as hereinabove set forth, and in its place substituting therefore the following:

#### ARTICLE V

##### ARCHITECTURAL CONTROL

Section 1. The Escalante Architectural Control Committee shall consist of three (3) or more persons designated by the Declarant, or designated by the Declarant's successors and assigns. Upon the resignation, for any reason, of one of the committee members, the remaining members shall promptly appoint a replacement. Until such appointment has been made, the remaining members shall exercise the committee's authority. The members of the committee need not be residents of Escalante Hills Replat II, Escalante Hills, or Escalante Hills Replat.

Section 2. In no event will any construction begin or any structure be erected or permitted to remain on any lot until the plans and specifications, plot plan and lot grading plan have first been submitted to and have received the written approval of the Escalante Architectural Control Committee, as to exterior design, exterior color scheme, use of exterior materials, lot

grading and placement of structures on the lot. No sign or billboard or fence of any kind or size shall be erected, placed or permitted to remain on any lot until the Escalante Architectural Control Committee has given its written approval therefor. The Declarant specifically reserves the right to deny permission to construct any type of structure or improvement which it determines will not conform to the general character plan and scheme for development of the subdivision. The approval or disapproval of the Escalante Architectural Control Committee as required in these covenants shall be in writing. Written approval or disapproval must be signed by a majority of the Committee members and mailed or delivered to the applicant's last known address. In case of disapproval, the Committee shall include a statement of the reasons for disapproval and shall indicate in a general way, the kind of plans and specifications which the Committee will approve for the subject property. Failure of Declarant to give either written approval or disapproval of a submitted plan within thirty (30) days after submission of said plan by mailing such written approval or disapproval to the last known address of applicant for approval as shown on the submitted plan shall operate to release such plans and specifications from the provisions of this Article V, Section 2.

Section 3. The following building restrictions shall apply to the above-described lots in ESCALANTE HILLS REPLAT II, ESCALANTE HILLS AND ESCALANTE HILLS REPLAT:

a) The following building restrictions apply to the above-described lots in ESCALANTE HILLS and ESCALANTE HILLS REPLAT. Where lots are improved with single-family dwellings, the following minimums shall be required for finished living areas exclusive of open porches, breezeways and garages: 1400 square feet on the ground floor for a one-story house or one-and-one-half story house if an attached garage plan (1500 square feet being required if a basement garage

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plan); 1800 square feet above basement level for a two-story house; 1600 square feet throughout the house for a tri-level house, and the foundation walls (including that of the garage) must enclose an inside ground area of not less than 1300 square feet; 1500 square feet above the foundation level for a bi-level, raised ranch or split-entry. In addition, each single-family dwelling shall contain at least 1 3/4 baths, as measured by current industry standards as to what constitutes a bath or fraction thereof and each single-family dwelling shall provide enclosed garage space for at least two cars (attached or basement garages being permitted, except that basement garages shall not be permitted in two-story houses). No dwelling unit shall exceed two stories in height.

b) The following building restrictions apply to the above-described lots in ESCALANTE HILLS REPLAT II. Where lots are improved with single-family dwellings, the following minimums shall be required for finished living areas exclusive of open porches, breezeways and garages: 1300 square feet on the ground floor for a one-story house or one-and-one-half story house if an attached garage plan (1400 square feet being required if a basement garage plan); 1700 square feet above basement level for a two-story house; 1500 square feet throughout the house for a tri-level house, and the foundation walls (including that of the garage) must enclose an inside ground area of not less than 1300 square feet; 1400 square feet above the foundation level for a bi-level, raised ranch or split-entry. In addition, each single-family dwelling shall contain at least 1 3/4 baths, as measured by current industry standards as to what constitutes a bath or fraction thereof and each single-family dwelling shall provide enclosed garage space for at least two cars (attached

or basement garages being permitted, except that basement garages shall not be permitted in two-story houses). No dwelling unit shall exceed two stories in height.

c) No building shall be located on any lot nearer to the front lot line, side lot line, or rear lot line than that permitted by the applicable zoning ordinances of the City of Omaha, as amended or as modified by the Board of Appeals; PROVIDED, HOWEVER, that in no event shall any building be located nearer than 25 feet from the front lot line, nor shall any building be closer than 5 feet from the side lot lines. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

d) The Escalante Architectural Control Committee may make exceptions to the above providing it is in harmony with the total plan.

Section 4. Said lots shall be used only for single-family residential purposes or for public park, nonprofit recreational, church or school purposes. No buildings shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling and a private garage, or any building used for the above purposes.

Section 5. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

Section 6. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on said real estate shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. No residence built in any other subdivision or area shall be permitted to be moved onto any of the above-described lots.

Section 7. All front exposed foundations of each dwelling shall be brick, and side and rear exposed foundations shall be painted in colors to harmonize with the exterior of the home. In lieu thereof, foundations may also be finished with stucco provided the same shall harmonize with the architectural design of the building and provided same is approved by the Escalante Architectural Control Committee.

Section 8. No outbuilding or attached structure appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Escalante Architectural Control Committee.

Section 9. Public sidewalks are the responsibility of and shall be constructed by the then owner of a lot prior to the time of completion of a building and before occupancy thereof. The extent of sidewalks, location, construction details, materials and grades shall be in accordance with the regulations of the City of Omaha and revisions thereof.

Section 10. Contemporaneously with the completion of the improvements on the premises each lot shall be sodded in all locations not improved by buildings or paving. Within one year from date of completion or date of occupancy a minimum of five (5) deciduous trees shall be planted upon the lot, two of which trees shall be implanted in the front yard of the lot and additionally, a minimum of seven (7) bushes or shrubs shall be planted in the front yard of the lot. All of said sodding, trees, bushes or shrubs shall be adequately maintained upon the premises.

Section 11. The owner of each lot, whether such lot be vacant or improved, shall keep such lot free of trash and debris.

Vacant lots shall be mowed at such time or times as may be necessary to keep weeds and other vegetation under twelve (12) inches in height. No outside radio, television or other electronic antenna or aerial shall be erected on any building lot without the written consent of the Escalante Architectural Control Committee. All garbage or trash cans outside of dwellings shall be screened from view so as to be not visible from surrounding lots or streets.

Section 12. Automobiles and other self-propelled vehicles parked out-of-doors must be in operating condition or else said vehicles may be towed away at the expense of the owners upon the request or act of any landowner in the addition. All automobiles must be parked either indoors or on hard-surfaced slabs or driveways if parked out-of-doors. Repair work on automobiles is not permitted outdoors. All boats, campers and trailers must be parked or stored indoors so as to not be visible from surrounding lots or streets. The dedicated street right-of-way located between the pavement and the lot line of any residentially-zoned lot shall not be used for the parking of any vehicle, boat, camper or trailer. No fence shall be erected or permitted to remain in front of the minimum building set back line applicable thereto. No clotheslines or clothes hangers may be constructed or used unless completely concealed within enclosed patio areas.

Section 13. Every owner shall have a right in easement of enjoyment in and to the "Common Area" which means all real property owned by the Sanitary and Improvement District No. 235 of Douglas County, Nebraska, or its successors-in-interest, for the common use and enjoyment of the owners. This right in easement shall be pertinent to and shall pass with the title to every lot. Any owner may delegate his right of enjoyment to the common area and facilities to the members of his family, guest or tenants: provided, however, that said owner shall be responsible to the association for the conduct upon and use by said family, guest or tenants of the common area. No motorcycles, motor carts, motor scooters, mini-bikes or snowmobiles shall be permitted or used in the common areas.

Section 14. A perpetual license and easement is reserved in favor of and granted to Omaha Public Power District and Northwestern Bell Telephone Company, SID District 235, Metropolitan Utilities District of Omaha, their successors and assigns, to erect and operate, maintain repair, replace and renew buried or underground utility service lines for utility service to the above-noted lots over, under, through and upon a five-foot strip of land adjoining the rear and a five-foot strip of land adjoining the side boundary lines of said lots; said easement shall not necessarily refer to the platted or replatted side boundary lot line, but shall refer to the side boundary lot lines as ultimately conveyed; and said license being granted for the use and benefit of all present and future owners of said lots.

Section 15. The Escalante Architectural Control Committee may make exceptions to any of the above provisions provided it is in harmony with the total plan.

Except as herein supplemented, all provisions of said Covenants, Conditions and Restrictions for the above-described real property, including Common Area, shall remain in full force and effect.

IN WITNESS WHEREOF, NEBRASKA SERVICE CORPORATION, a Nebraska Corporation, being the owner of all said real estate, (except Common Area) has executed these covenants this 7 day of November, 1979.

NEBRASKA SERVICE CORPORATION

By: Charles J. Leise

Charles J. Leise, Vice President

ATTEST:

H. E. McHugh  
Secretary



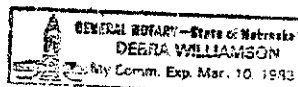


STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DODGE )

BOOK 627 PAGE 120

On the day and year last above written, before me, the undersigned a Notary Public in and for said County, personally came Charles J. Leise, to me personally known to be the Vice President of NEBRASKA SERVICE CORPORATION, a Nebraska Corporation, and the identical person whose name is affixed to the above Protective Covenants, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation, and that the corporate seal of the said corporation was thereto affixed by its authority.

WITNESS my hand and Notarial Seal at Lincoln, Neb. in said County, the day and year last above written.



Debra Williamson  
Notary Public

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Book 627  
Page 110  
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SECOND SUPPLEMENTARY DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, the assignor of this Declarant, Black and Elliot Development Company, placed of record certain Covenants, Conditions and Restrictions on certain property in the County of Douglas, State of Nebraska, which is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference and recorded in Book 564 at Page 589 of the Miscellaneous Records of Douglas County, Nebraska,

WHEREAS, this Declarant, Nebraska Service Corporation, a Nebraska corporation, the successor and assign of Black and Elliot Development Company, placed of record certain Supplementary Declaration of Covenants, Conditions and Restrictions on the property described in Exhibit "A" and recorded in Book 627 at Page 110 of the Miscellaneous Records of Douglas County, Nebraska,

WHEREAS, this Declarant is the owner of more than 90 percent of the Lots that are more particularly described on Exhibit "A",

WHEREAS, this Declarant is owner of the real property described as follows:

Lots Eighty-Seven (87) to One Hundred (100), inclusive, Escalante Hills Replat, a subdivision in Douglas County, Nebraska

WHEREAS, this Declarant, in order to preserve and promote a uniform residential development and to enhance the value and desirability of all of said Lots described on Exhibit "A" is desirous of annexing and including Lots Eighty-Seven (87) to One Hundred (100), inclusive, Escalante Hills, in and to said Covenants and subjecting the said premises to all the terms and conditions of said Covenants and Supplements thereto pursuant to Article VI thereof.

WHEREAS, this Declarant, in order to preserve and promote a uniform residential development and to enhance the value and desirability of all of said Lots, including the proposed Lots to be annexed, is desirous of defining the responsibility of Escalante Hills Homeowner's Association II, Inc., its successors and assigns concerning the maintenance of common area owned by Sanitary and

Improvement District No. 235 of Douglas County, Nebraska, and maintained by the Association for common use and enjoyment of all property owners within said District.

NOW, THEREFORE, in consideration of the foregoing preamble, the undersigned declare that the following property shall be annexed as set forth and further that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of, for addition to and in clarification of the easements, restrictions, covenants and conditions contained in the Declarations and supplemental Declarations to the extent, and only to the extent that the same are inconsistent therewith:

1. This Declarant, Nebraska Service Corporation, a Nebraska Corporation, does hereby annex, pursuant to Article VI of the aforesaid Covenants and Supplements thereto, the following real property, to-wit:

Lots Eighty-Seven (87) to One Hundred (100), inclusive, Escalante Hills Replat, a subdivision in Douglas County, Nebraska

and said real property shall be subject to all terms and conditions of said Covenants and Supplements thereto.

2. It is agreed that Escalante Hills Homeowner's Association II, Inc., its successors and assigns shall be solely responsible for the maintenance of that part of Lot Sixty-Two (62) and all of Lot Sixty-Six (66), Escalante Hills, a subdivision in Douglas County, Nebraska, said lots being more particularly described on Exhibit "B", attached hereto and incorporated herein by reference and all of Lot 160 and that part of Lot 159, Escalante Hills Replat, a subdivision in Douglas County, Nebraska, said lots being more particularly described in Exhibit "C", attached hereto and incorporated herein by reference.

Except as herein supplemented, all provisions of said Covenants, Conditions and Restrictions and Supplements thereto shall remain in full force and effect.

IN WITNESS WHEREOF, Nebraska Service Corporation, a Nebraska corporation, has executed these Second Supplementary Covenants this 12 day of May, 1980.

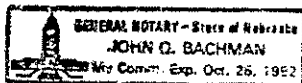
NEBRASKA SERVICE CORPORATION,  
A Nebraska Corporation

By:

Charles J. Leise  
CHARLES J. LEISE  
Vice-President

STATE OF NEBRASKA     )  
                              ) SS  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 12 day of May, 1980, by Charles J. Leise, Vice-President of Nebraska Service Corporation, a Nebraska corporation, on behalf of the corporation.



John Q. Bachman  
Notary Public

