

Escalante Hills Declaration & By-Laws

DECLARATION

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

WITNESSETH:

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 – 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 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. Owner's 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 to 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 successor Declarant as provided in the By-Laws. The Declarant Member or its successors shall be entitled to for (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.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of 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 therefore, whether or not is 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 the 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 non-profitable 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 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 reasonable itemized detail, and 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 office 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) percent 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. Now 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. Now 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 or 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 swelling 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 typography 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 be 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 the 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 way 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 even of any dispute arising concerning a party wall, or under the provisions of the 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 ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so, 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 even the two arbitrators so appointed shall fail to appoint the third arbitrator within ten (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 case of arbitration, the parties hereto shall each pay the expense of its own Attorneys' and witnesses' fees, and al other expenses of such arbitration shall be divided equally between the parties.

ARTICLE VIII

GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sunscreens 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 of dry cleaning equipment for the use of occupants of building 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 used 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 ht 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 apart 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, ashes, 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 building site in the properties to be used 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 furnishing 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 landing 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 mortgages to adjust all claims arising under insurance policies purchase 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 exceeds 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.

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 of 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 percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (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 Declarant 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 complimentary additions modifications as may be appropriate, convenient, or necessary for accommodations 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 hereby unto set its hand and seal this 21st day of August, 1972.

BLACK AND ELLIOTT DEVELOPMENT
COMPANY, a Partnership by Leon F. Black
A Partner
By Don W. Elliott
A Partner

AMENDMENTS TO DECLARATION

THESE AMENDMENTS TO DECLARATION made on the date hereinafter 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 Declaration, dated August 21, 1972, and filed at Page 459 through 467, inclusive of Book 513 of the Miscellaneous Records in the office of the Register of Deeds of Douglas County, Nebraska concerning the following described real estate, to wit: Lots 170 through 187, inclusive and Lot 63 in Escalante Hills, a subdivision in Douglas County, Nebraska, as surveys, platted and recorded; and

WHEREAS, Declarant, in the manner provided in said Declaration, did annex to said Declaration certain real estate extending to each lot so annexed all terms and conditions of said Declaration which Supplementary Declaration was dated May 23, 1973 and filed at Page 521 through Page 633, inclusive of Book 522 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 covenants for the purpose of protecting the value and desirability of all of said real estate.

NOW, THEREFORE, in consideration of the foregoing preambles, the undersigned declares 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 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 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 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 (E 1/2) of the Northeast Quarter (NE 1/4) 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°

48'36" 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 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° 42'25" 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 I 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 II

That Article III of said Declaration shall be amended so that after amendment said Article II 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 of 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.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 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.

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 owner hereby irrevocably appoints the Association 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. All insurance proceeds shall be applied by the Association towards repairing the damage suffered; provided the 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.

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 24th day of May, 1973.

BLACK AND ELLIOTT DEVELOPMENT
COMPANY, A partnership

By LEON F. BLACK
A Partner

By DON W. ELLIOTT
A 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 know 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.

SEAL

MARK L. LAUGHLIN
Notary Public

My commission expires July 22, 1976.

SUPPLEMENTARY DECLARATION

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

WITNESSETH:

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 recorded; 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 executed a certain Declaration of covenants, easements, restrictions 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 subjection the premises to all the terms and conditions thereof in the manner provided in Section 4 of Article XI of said Declaration;

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, Escalante Hills Replat, a subdivision in Douglas County, Nebraska as surveyed, platted and recorded; is and will be acquired, conveyed, devised, inherited, sold or otherwise transferred and is and will be occupied and us 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 the 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 the 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 the 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 of 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 of 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

MARK L. LAUGHLIN
Witness

by LEON F. BLACK
A Partner

MARK L. LAUGHLIN
Witness

DON W. ELLIOTT
A Partner

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 and deed.

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

SEAL

MARK L. LAUGHLIN
Notary Public

My commission expires July 22, 1976.