

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.

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564

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

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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

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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:

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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 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:

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586

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

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 afore-said 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

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. Invalidation 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

