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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FOUNDERS TITLE  
BY: ZJM, DEPUTY - WI 8 P.

7863511

AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
HBB HOMEOWNERS ASSOCIATION

THIS DECLARATION, made, on the date hereinafter set forth by HBB DEVELOPMENT, INC., hereinafter referred to as "Declarant".

On the 16<sup>th</sup> day of May Declarant filed the original Declaration of Covenants, Conditions and Restrictions with the Salt Lake County Recorder, entry #7741002, which are hereby restated in their entirety.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located at 1936 South 1700 East in Salt Lake City, County of Salt Lake, State of Utah, which is more particularly described as:

Beginning at a point North 0 deg .04 min. West 703 feet from the Southwest corner of the Southeast Quarter of Section 16, Township 1 South; Range 1 East, Salt Lake Meridian, and running thence North 0 deg. .64 min. West 120 feet; thence South 89 deg. 57 min East 310 feet, more or less to a four rod road; thence South 0 deg. 6 min East along the West side of said road 120 feet, more or less, thence South 89 deg. 21 min. West 310 feet, more or less, to place of beginning.

MORE COMMONLY KNOWN AS: HBB BAILEY SUBDIVISION

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 and 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.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to HBB HOMEOWNERS ASSOCIATION, its successors and assigns.

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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 (including the improvements thereto) 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 as shown on the recorded subdivision map of HBB BAILEY SUBDIVISION.

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 HBB DEVELOPMENT, INC., 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 suspend the voting rights of an owner for any term during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (b) 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. However, each Owner covenants and agrees that if additional residential property and/or Common Area is dedicated for the purpose of sharing the road and/or other improvements with adjoining properties, or if access is granted to the road by any other means, including but not limited to, easement, license, or deed, the Declarant shall receive an amount of One hundred forty five thousand and no/100 (145,000.00) which shall become due immediately upon such dedication unless otherwise paid under Article VI, Section 4 of this Agreement. The amount outstanding shall accrue interest at the rate of Ten Percent (10%) per annum and each Owner, as well as the Association, shall be jointly and severally liable for the amount due to Declarant.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Declaration of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area 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 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) three (3) years from the date of signing of this Declaration.

### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and personal Obligations of Assessments. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual 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 successor 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.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Fifty dollars and no/100 Dollars (\$50.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (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 annual assessment may be increased above five percent (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 annual 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. Pursuant to Salt Lake City Code provisions, Lot Owner's are hereby advised that the costs of maintenance and capital improvements have been estimated for a period of sixty years and attached hereto as Schedule "A".

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 percent (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 annual 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 Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyances of the Common Area. The first 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 certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the

Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. 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 percent (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

Section 1. Improvements. All homes built on the property must not exceed one story and must be a minimum of 1500 square feet. 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, and be in conformity with the city planning commission requirements. 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.

Section 2. Parking. No street parking will be allowed upon the private street of the development, pursuant to city planning requirements.

Section 3. Landscaping. Landscape plans shall be submitted to the Association for approval and landscaping shall be completed within sixty (60) days of occupancy of each lot owner. All Lots, whether occupied or unoccupied, and any improvements placed thereon, shall be maintained in such manner as to prevent their becoming unsightly by reason of unattractive or diseased growth, accumulation of rubbish or debris. The foregoing is not intended to prevent the Developer of Builder from storing and/or stockpiling building materials, construction materials and/or dirt for reasonable periods of time.

**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 by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so at any time thereafter.

Section 2. Bylaws. Bylaws for the administration of the Association and the property shall be adopted by the Association by concurrence of those voting Owners holding 60% of the voting power at a regular or special meeting. The Bylaws shall contain provisions not inconsistent with this Declaration of Covenants, Conditions, and Restrictions.

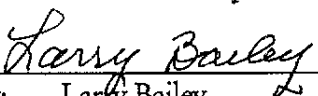
Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

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 percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. However, the provisions under Article II, Section 1b or under this Article, Section 4, may not be amended, unless Declarant has agreed to such amendment in writing.

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. However, each Owner covenants and agrees that if additional residential property and/or Common Area is annexed to the Properties that Declarant shall receive an amount of One hundred forty five thousand and no/100 (145,000.00) which shall become due immediately upon such annexation unless otherwise paid under Article II of this Agreement. The amount outstanding shall accrue interest at the rate of Ten Percent (10%) per annum and each Owner, as well as the Association, shall be jointly and severally liable for the amount due to Declarant. Declarant shall be entitled to recover reasonable legal fees and costs incurred in enforcing the provisions of this Section or Article II, Section 1b.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of April, 2001.

HBB DEVELOPMENT, INC.

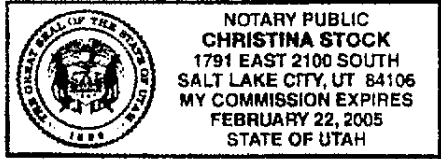
  
\_\_\_\_\_  
By: Larry Bailey  
Its: President

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On the 4<sup>th</sup> day of April, 2001, personally appeared before me LARRY BAILEY, whose identity is personally known to me, (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the President of HBB Development, Inc., and that said document was signed by him in behalf of said Corporation by authority of its Bylaws (or of a Resolution of its Board of Directors), and acknowledged to me that said Corporation executed the same.

Christina Stock  
NOTARY PUBLIC

My Commission Expires:  
2/22/2005



NOTARY SEAL NOT LEGIBLE  
- CO RECORDER -

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SCHEDULE A

	Yrs 1-10	Yrs 11-20	Yrs 21-30	Yrs 31-40	Yrs 41-50	Yrs 51-60	Total
Lot 1							
Asphalt	500	500	6,000	500	500	6,000	14,000
Curbs/Gutter	0	0	500	0	0	750	1,250
Sidewalk	0	0	500	0	0	750	1,250
Water	0	0	500	0	0	750	1,250
Lot 2							
Asphalt	500	500	6,000	500	500	6,000	14,000
Curbs/Gutter	0	0	500	0	0	750	1,250
Sidewalk	0	0	500	0	0	750	1,250
Water	0	0	500	0	0	750	1,250
Lot 3							
Asphalt	500	500	6,000	500	500	6,000	14,000
Curbs/Gutter	0	0	500	0	0	750	1,250
Sidewalk	0	0	500	0	0	750	1,250
Water	0	0	500	0	0	750	1,250
Lot 4							
Asphalt	500	500	6,000	500	500	6,000	14,000
Curbs/Gutter	0	0	500	0	0	750	1,250
Sidewalk	0	0	500	0	0	750	1,250
Water	0	0	500	0	0	750	1,250
	2,000	2,000	30,000	2,000	2,000	33,000	71,000

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