

**DECLARATION OF PROTECTIVE EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS  
LAST STAND SUBDIVISION**

**Heber City, Wasatch County, Utah**

**THIS DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS** (the "Declaration") is made this 15<sup>th</sup> day of July 2008 by Russ Witt ("Declarant"), in its capacity as the owner and developer of **Last Stand Subdivision**, a residential subdivision in Heber City, Utah, (the "Property").

**RECITALS**

- A. The purpose of this instrument is to provide for the preservation of the values of lots and residential improvements within the Property.
- B. The property which is to be held, transferred, sold, conveyed, and occupied subject to the provisions of the Declaration consists of the real property in the City of Heber, Wasatch, County, State of Utah described in **Exhibit A**, attached hereto and made a part hereof.

**TOGETHER WITH** all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat of the Property.

**RESERVING UNTO DECLARANT**, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (excluding residence dwellings) now or hereafter constructed thereon, as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of the Declaration) to construct and complete each and all of the other improvements described in the recorded Plat, and to do all things reasonably necessary or proper in connection therewith.

- C. A Plat entitled **Last Stand Subdivision**, subdividing the described real property into 10 lots, as set forth and described therein, is recorded concurrently with this Declaration in the Office of the County Recorder of Wasatch County.

**NOW, THEREFORE**, Declarant hereby states that all of the property described in **Exhibit A** (sometimes herein referred to as "land", "lot", "Plat", "subdivision" or "Property") shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, easements, reservations and restrictions, all of which are declared and agreed to be in furtherance of the plan for the improvement and sale of the property, and are established and agreed upon for the purpose of enhancing and protecting

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the value, desirability, and attractiveness of the property and every part thereof. All of the provisions of the Declaration will be deemed to be covenant, or equitable servitudes, as the cause may be, running with the land, and shall be binding upon all parties having or acquiring any right, title or interest in the described land or any part thereof.

#### ARTICLE I – RESIDENTIAL AREA COVENANTS

- 1.1 **Zoning.** The property is zoned residential and is restricted to single family residential use pursuant to applicable provisions of Heber City's zoning ordinances. No residence, or any party thereof, shall be occupied by any persons not coming within the definition of "Family" as such term is intended and defined in such ordinances.
- 1.2 **Subdivision Design Concept.** It is intended hereby to create a single family residential subdivision of homes which are all of a compatible design, size and value. All homes shall exhibit creative architectural design, detail and the use of above-average new materials (except for used brick, which may be utilized) with conventional construction methods. **Pre-fabricated or pre-constructed home are not permitted.**
- 1.3 **Architectural and Landscape Control.** No structure, building, landscaping, or other improvements shall be erected, placed or altered on any lot until the construction plans and specifications therefore, and a plan showing the location of the proposed improvements on the lot, have been approved by the Architectural and Landscape Committee (the "ALC"), as hereinafter provided, as to quality of workmanship and materials, harmony of exterior design with existing structures and as to location with respect to topography and finish grade elevation. No accessory buildings, fences, walls or landscaping shall be erected, replaced or altered on any lot unless similarly approved. No residential dwelling shall contain less square footage than the minimums set forth in this Declaration.
- 1.4 **Dwelling Quality and Size.** The following sub-sections shall serve as minimum guidelines only:
  - 1.4.1 **General.** No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling, not to exceed two stories in height, in addition to a basement or attic area, if any, and must include a private attached garage for not less than two vehicles. **Carports and open storage areas are not permitted.** Detached garages or accessory buildings will be allowed only if approved by Heber City and the ALC.
  - 1.4.2 **Minimum Areas.** A single story dwelling shall have finished main floor living area of not less than 1,600 square feet. A split-level dwelling or a two-story dwelling shall have finished main floor living area of not less than 1,200 square feet with the second level having not

less than 600 square feet. As used herein the phrase "main floor living area" shall mean any square footage above grade. The minimum square footages as required herein shall be deemed to exclude that of garages, porches, patios, verandas, balconies, basements and steps. Any deviations from these requirements must be approved in writing by the ALC.

- 1.4.3 **Exterior and Roof Materials.** Dwelling exteriors, exclusive of windows and doors except garage doors, must be constructed of not less than 50% stone or brick with the balance of stucco or wood siding. All roofing material must be of either wood shake or 25 year architectural grade shingle or better.
- 1.4.4 **Elevations.** Dwelling elevations shall vary from lot to lot and no elevation shall be duplicated on adjacent lots having common side lot lines.
- 1.4.5 **Accessory Structures.** Any detached accessory building permitted and erected on a lot pursuant to the guidelines set forth herein shall conform in design and materials with the primary residential dwelling on the lot.
- 1.5 **Landscape Plan.** As part of the submission to the ALC of plans and specifications for improvements to be constructed on any lot, there shall be a landscape plan which shall include plans for sprinkler, drainage of surface water, and details of fencing. **Chain link fencing will not be allowed in front yard set-backs.**
- 1.6 **Landscaping.** All approved front yard landscaping, fencing, and front yard sprinklers shall be installed and operative before the end of the first growing season following the date of issuance of a certificate of occupancy for a dwelling constructed on a lot. A growing season shall be deemed to be from April 1 through September 30.
- 1.7 **Timely Construction; Material Storage.** Construction on all dwelling must commence within one year of the ALC approval or such approval will lapse. All dwellings under construction must be completed pursuant to the plans and specifications submitted to the ALC within 18 months from the commencement of any construction, or alteration, with dates to be determined by the records of Heber City as to building permits, inspections, etc. Damage to public roads or sidewalks within the subdivision which occur during construction shall be repaired, or bonded therefore, prior to issuance of a certificate of occupancy. No building material of any kind or character shall be placed or stored upon any lot until the owner thereof is prepared to commence construction of improvements and plans have been approved by the ALC. Building materials shall be placed only within the property lines of the lot upon which the improvements are to be erected.

- 1.8 Signs.** No signs of any kind shall be displayed to the public view or any lot except one sign of not more than six or eight square feet advertising the lot for sale or rent, or similar signs used by a builder or realtor to advertise the lot during the construction and sales period. This provision shall not impair Declarant's right to utilize larger signage for permanent entrance statements or for advertisement during construction, development and marketing of the Property.
- 1.9 Livestock, Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except for dogs, cats, and other domesticated household pets; provided that these are not kept, bred, or maintained for any commercial purpose; and, provided further, that all pets kept outside must be restrained in a humane manner. Kennels, runs and leash areas must be kept clean and sanitary. No pets shall be kept in unreasonable numbers or against any provision of the Heber City ordinances as to type, licensing, etc.
- 1.10 Utilities.** Utility easements are shown on the recorded Plat and all utility lines of any kind, including power, sewer, water and telephone shall be placed underground.
- 1.11 Satellite Dishes/Antennae.** No satellite dishes or antennae shall be placed in the front set back or any area within public view. Any roof mounted antenna or equipment (air conditioning apparatus, etc.) shall be placed behind the roof ridge line so as not to be visible from the public road way. **Evaporative coolers shall not be utilized.**
- 1.12 Garbage and Refuse.** No trash or any other refuse shall be dumped, or thrown, or otherwise deposited of on any lot or portion thereof. All lot owners shall subscribe to the disposal service utilized throughout Heber City.
- 1.13 Temporary Structures.** No structure of a temporary character (trailer, basement, tent, shack, garages, barns or other buildings) shall be used on any lot at any time as a residence.
- 1.14 Fencing.** No fence, wall hedge, or other dividing structure shall be permitted on a lot within the front yard setback. No dividing structure on any other portion of the lot shall be over 6 feet in height. All fences must conform to Heber City ordinances and be approved in writing by the ALC prior to installation.
- 1.15 Parking and Vehicle Storage.** No inoperative automobile shall be placed or remain on any lot or adjacent street for more than 48 hours. No commercial type vehicles or trucks shall be parked or stored on the front yard set back of any lot or within the side yard building setback on the street side of a corner lot, or on a residential street within the Development, except while engaged in transient business. Trailers, mobile homes, trucks under three-quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, or

maintenance equipment of any kind, shall be parked or stored behind the front yard setback in an enclosed area screened from street view. Sufficient side yard gate access shall be planned and provided for in the design of any dwelling to permit ingress, egress and storage of trailers and recreational type vehicles on the side and rear yards. **The storage or accumulation of junk, trash, manure, fuel or other inflammable matter, or other offensive or commercial materials is prohibited.**

- 1.16 **Maintenance.** Every lot, including the improvements and landscaping thereon, shall be kept in good repair maintained by the owner thereof in a clean, safe and attractive condition at all times.
- 1.17 **Nuisances.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or permitted thereon which may become an annoyance or nuisance to the Property including noisy or unruly pets.

## **ARTICLE II- ARCHITECTURAL AND LANDSCAPE COMMITTEE ("ALC")**

- 2.1 **Membership.** The ALC shall be composed of a minimum of three persons of Declarant's choosing who may or may not be lot owners. A majority of the ALC members may designate a representative to act for the ALC without in any way relieving any owner from compliance with the requirements set forth in the Declaration. In case of a vacancy on the ALC which remains unfilled by Declarant for 30 days following written notice thereof, the remaining ALC members shall have full authority to designate a successor. Neither the members of the ALC nor its designated representatives shall be entitled to compensation for services performed pursuant to this Declaration, and they assume no personal liability and shall be held free and harmless from damages, including attorney fees and costs, for actions taken or decisions made by the ALC. When all lots within the Development owned initially by Declarant have been sold, Declarant shall appoint a successor ALC. The ALC shall at all times have a minimum of three members. Except for the initial members of the ALC, all members shall be residents of the subdivision at the time of their appointment and during their tenure. A majority of the lot owners have authority to replace, remove and/or appoint any ALC member at any time with or without cause, once the successor ALC has been appointed.
- 2.2 **Standards.** In deciding whether to approve or disapprove plans and specifications submitted to it, the ALC shall use its best judgment to ensure that all improvements, construction, landscaping, and alterations on lots within the subdivision conform to the requirements set forth herein, and that they harmonize with existing surroundings and structures. If any structure hereafter constructed on any lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style, and be approximately the same size as the prior structure, and if the plans and specifications therefore meet such criteria, the ALC must approve the same.

- 2.3 Procedures.** The ALC shall act within a reasonable time on any submittal, and shall document its action in writing to be held as a permanent record, with copies to parties concerned and on file. The requirements for preliminary plans and final working drawings shall be those prescribed by the ALC in writing and given to lot owners at the time of their lot purchase, or at any time, from time to time. An owner whose plans or other requests are rejected shall meet with the ALC at the ALC's invitation and shall be informed of the nature of the cause of rejection so that necessary remedial action might be taken. In the event the ALC fails to approve or disapprove such plans and specifications within 30 days after the same have been submitted to it, then the plans shall be deemed approved, except as to such matters that are prohibited herein or by the ordinances of Heber City.
- 2.4 Submittals.** All plans, specifications and plot plans, including exterior material and color selections, must be submitted to the ALC in duplicate and be accompanied by a written request for approval. As long as Declarant has the right to choose the members of the ALC, the address for submittals to the ALC pursuant to this Declaration shall be that of Declarant. The ALC's approval or disapproval shall be in writing and returned to the one making submission, together with a notation of approval, disapproval, corrections, or modifications, and the date thereof, affixed to one copy of such plans and specifications. A duplicate copy of such actions and the other copy of plans and specifications shall be retained by the ALC for its permanent records.

### ARTICLE III-GENERAL PROVISIONS

- 3.1 Nature of Subdivision.** The subdivision contains no areas common to all lot owners. Therefore, all lot owners must obtain and keep in force their own hazard and liability insurance coverages with respect to their residences and lots.
- 3.2 Enforcement.** Enforcement of the provisions of the Declaration shall be by proceedings at law or in equity to restrain violation and/or to recover damages against any person or persons violating or attempting to violate any of the provisions contained within the Declaration. The ALC or any of the lot owners shall have the right, but not the obligation, of enforcement as described in this Section 3.2. The successful party in any such proceedings shall be entitled to reasonable attorneys fees and costs incurred, whether such proceedings are by suit or through alternative dispute resolution.
- 3.3 Term.** The provisions of the Declaration shall run with the land in perpetuity from the date of its recording but may be amended or supplemented as provided herein.
- 3.4 Amendment.** This Declaration may be amended by a written instrument executed by the then record owners of at least seven of the lots within the subdivision and upon recording the same with the Recorder of Wasatch

County, Utah; provided, however, that until at least seven of the lots in the subdivision have been conveyed by Declarant, Declarant alone shall have the right to make and effect such amendments and record such instruments.

- 3.5 Interpretation.** In interpreting the provisions hereof as they pertain to municipal zoning or subdivision ordinances, if there are any discrepancies with the Heber City zoning and subdivision ordinances, as amended from time to time, then the Heber City zoning and subdivision ordinances shall control such interpretation, including the meaning of any terms or definitions used herein.
- 3.6 Covenants to Run with Land.** This Declaration and all the provisions hereof are declared to be and shall constitute covenants which run with the land, or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit the Declarant and any and all parties who have acquired, or who shall hereafter acquire, any interest in a lot, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future owner, mortgagee, tenant or occupant of a lot or dwelling shall be subject to and shall comply with the provisions of this Declaration. Each party acquiring any interest in a lot or dwelling thereby consents to and agrees to be bound by all of the provisions of the Declaration.

**IN WITNESS WHERE OF,** Declarant executes this Declaration as of the day and year first above written.

RUSS WITT

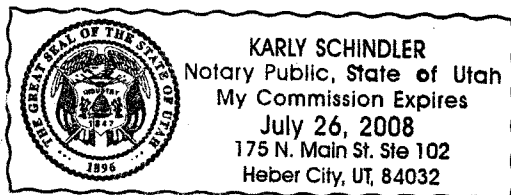
By: J. Russell Witt  
J. Russell Witt

STATE OF UTAH )

COUNTRY OF WASATCH )

) ss.

The within instrument was acknowledged before me this 15 day of July, 2008, by J. Russell Witt, who acknowledged that they executed the foregoing document.



Karly Schindler  
Notary Public

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## **Exhibit A**

All of Lots 1 through 10 of Last Stand Subdivision, Plat A, as recorded in the office of the Wasatch County Recorder, Wasatch County, Utah.

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