SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into by and between **QUALITY DEVELOPMENT, LLC, DUCKY & DUCKIE, LTD., JKE, LC, EDWARD L. BOWLER, and STAN BLAKE** (collectively referred to herein as "Owner"), and **IVINS CITY**, a political subdivision of the State of Utah (the "City"), collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Owner acquired title to, and is now seeking approvals to develop, a parcel of real property located in Ivins City consisting of approximately 128 acres of unimproved land (the "Property"); and

WHEREAS, a summary of relevant facts and timeline is attached hereto as Exhibit "A" and by this reference is incorporated herein; and

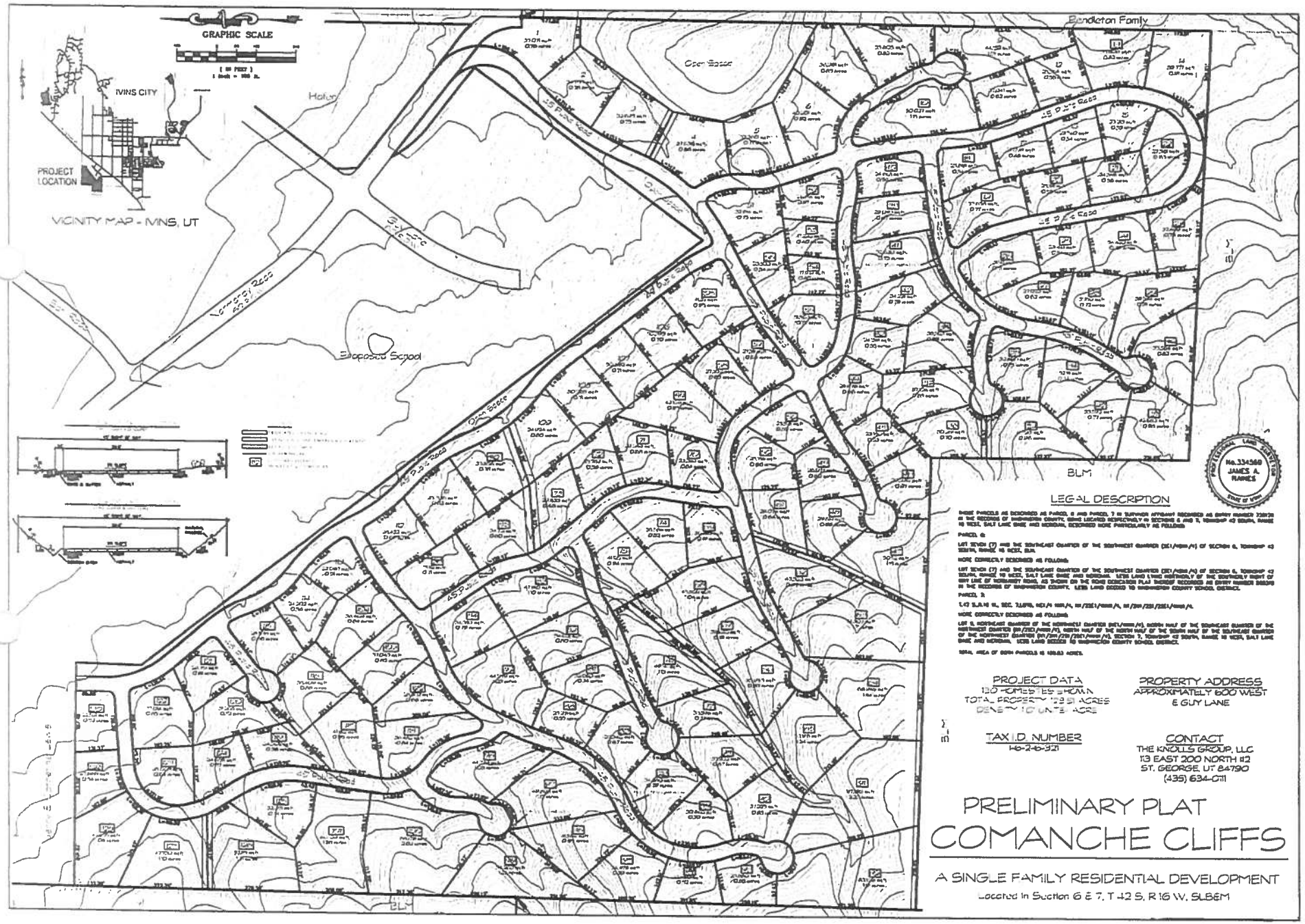
WHEREAS, the primary issue in dispute between the Parties is whether the City's August 5, 2004 Ordinance No. 2004-20 establishing temporary regulations pertaining to subdivision and site plan approvals on environmentally sensitive lands, the final and permanent version of which was adopted February 3, 2005 as Ordinance No. 2005-03 and is now commonly known as the "Sensitive Lands Ordinance," governs and controls Owner's proposed development; and

WHEREAS, it is otherwise agreed that at the time the Owner filed a subdivision application with the City, the property was governed by the City's Zoning Ordinance as revised May, 2000, and whereby the property was zoned "Planned Development" (PD); and

WHEREAS, by joint resolution of the state Legislature during the 2005 General Session (S.J.R. 3), entitled "Resolution Encouraging Mediation," state and local government entities were urged "to use alternative dispute resolution as a preferred option of preventing and resolving conflicts, reducing litigation costs, and resolving disputes for the benefit of the citizens of the state of Utah;" and

WHEREAS, the Parties have followed S.J.R. 3 and have utilized the services of Craig M. Call, Utah's Private Property Ombudsman, to mediate and resolve the above-referenced issues in dispute; and

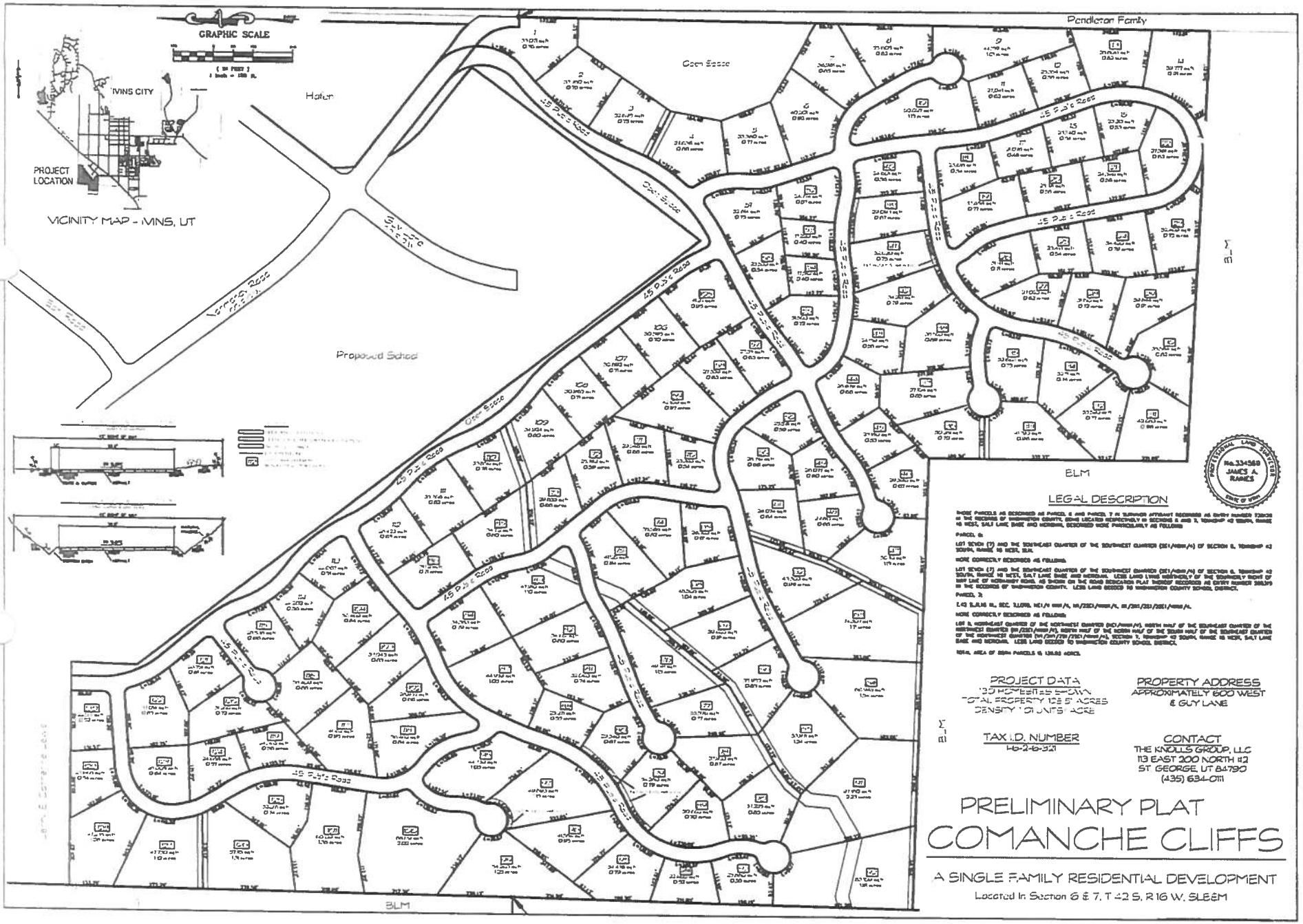
WHEREAS, while preserving their legal positions on the primary issue in dispute until Case No. 040501540, entitled Quality Development, LLC. v. Ivins City, is dismissed with prejudice, the Parties desire to resolve the primary issue in dispute by entering into this Settlement Agreement to allow reasonable development of the Property while protecting issues critical to the City identified in the Sensitive Lands Ordinance, such as: preserving ridgelines; avoiding mass-grading by restricting areas of disturbance; minimizing visual mass by lessening density and by requiring variation in the placement and screening of 2-story walk-out basements;



BUSS & GUBLER, INC.
Engineers - Planners - Surveyors
185 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-3535 Fax (435) 673-8181

COMANCHE CLIFFS
LOCATED IN SEC 6 & 7, T42S, R16W, SLB&M
IVINS, UTAH

SHEET 1
OF SHEETS 1


GRAPHIC SCALE
IVINS CITY
PROJECT LOCATION
VICINITY MAP - IVINS, UT
Holter
Pendleton Family
Open Space
Proposed School
45 Foot Road
35 Foot Road
BLM
LEGAL DESCRIPTION
PROJECT DATA
120 HOMESITES SHOWN
TOTAL PROPERTY 128.5 ACRES
DENSITY 1 UNITS / ACRE
PROPERTY ADDRESS
APPROXIMATELY 600 WEST
& GUY LANE
TAX I.D. NUMBER
CONTACT
THE KNOLLS GROUP, LLC
113 EAST 200 NORTH #2
ST. GEORGE, UT 84790
(435) 634-0111
PRELIMINARY PLAT
COMANCHE CLIFFS
A SINGLE FAMILY RESIDENTIAL DEVELOPMENT
Located In Section 6 & 7, T 42 S, R 16 W, SLB&M

and imposing reasonable regulations governing building height, cuts and fills, and heights of retaining walls;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

AGREEMENT

1. Density. The Owner shall be allowed to develop the Property to a maximum density of 130 units, the layout of which shall be in accordance with the Site Plan showing the layout of all streets and lots which is attached hereto as Exhibit "B" and by this reference is incorporated herein.

2. Open Space. Areas that are to remain open space are depicted on the attached Site Plan. Although Owner has voluntarily offered to dedicate these open space areas to the City, the City does not presently wish to accept the dedication of these areas. Therefore, the Parties hereby agree to amend the Legend on the attached Site Plan from "Dedicated Open Space" to merely "Open Space."

3. Ridgeline and View-Shed Protection. Owner has demonstrated that homes on the twelve or thirteen lots located within one hundred vertical feet (100') of the ridgeline directly to the south of the Property would not project above said ridgeline as viewed from Highway 91 north of the Property, approximately near the intersection of 400 West Street and Highway 91. Therefore, the Parties agree that homes may be constructed on each of the 130 lots depicted on the attached Site Plan.

4. Maximum Limits of Disturbance Area. The Maximum Limits of Disturbance Area for each lot shall be 15,000 square feet. All grading, excavation, filling and construction disturbance, except for driveways and sewer if the topography prohibits placement of the sewer in the driveway, must occur within the Maximum Limits of Disturbance Area. However, up to an additional 1,500 square feet of disturbance area shall be allowed for each lot where the topography of the lot demonstrates the need for such additional disturbance in order to mitigate cuts and fills for lot improvement.

5. Minimizing Mass.

    a. Variety of Faces/Facades. Buildings shall be asymmetrical or irregular in shape, with frequent breaks/changes in the facade. Each building façade (front, back, sides) shall be broken up into multiple planes, with a minimum difference of two (2) feet between planes. There shall be no long continuous facades longer than forty feet (40') in length, unless interrupted by a mass or jog in plane. No more than thirty-five percent (35%) of the 2-story side of the building may be exposed as the full 2-story building height. The other portions of the 2-story side shall be bermed and screened; however, neither walls nor fences shall be considered proper screening of the 2-story side of the building for determining the thirty-five percent (35%) exposure allowance.

b. Fifty Percent (50%) Maximum Visible 2-Story. No more than fifty percent (50%) of the total lots (65) on the Property are allowed to have the full 2-story portion of the home visible from any of three view points on Highway 91: Main Street and Highway 91; 400 West and Highway 91; and 400 South and Highway 91. Neither walls nor fences shall be considered proper screening of the 2-story side of the building for determining visibility of the full 2-story portion from the foregoing viewpoints.

c. Maximum Building Height. All buildings shall be one-story with optional walk-out basements on lots where the topography permits and the lot has been specifically identified on the attached Site Plan as one on which a walk-out basement is permitted. Wall heights may not exceed nine (9) feet on the basement level, nine (9) feet on the main level, with a reasonable floor truss in between, and roof with a maximum pitch of 4/12.

d. Roofs. Roofs shall be flat or hipped in configuration. All roof planes shall have an approximate maximum pitch of 4/12. There shall be no long continuous rooflines (fascia line of the roof) longer than forty feet (40') in length, unless interrupted by a mass or jog in plane.

e. Fences and Walls. All fences and walls shall be located within the maximum limits of disturbance area for each lot.

   i. Generally, no retaining wall shall exceed three (3) feet in height, measured from the immediately adjacent lowest natural or finished grade, without demonstrating that the retaining wall minimizes filled areas on the lot and is screened from view along Highway 91 by the house, berming or landscaping.

   ii. Similarly, retaining walls shall not be terraced or stacked in any manner that increases the height of any retaining wall, or series of retaining walls, to a height greater than three (3) feet, from the immediately adjacent lowest natural or finished grade, without demonstrating that the retaining wall minimizes filled areas on the lot and is screened from view along Highway 91 by the house, berming or landscaping.

   iii. Retaining walls shall be constructed of materials, or be finished to blend the wall with the surrounding landscape colors and features. All exposed portions of any retaining wall(s) shall be treated and finished and be a color so that no untreated concrete, concrete block or similar materials are visible.

f. Benching and Terracing Prohibited. Generally, no cutting, grading, filling, excavating, benching, or terracing of any proposed lot or parcel shall be permitted or authorized to occur outside of the maximum limit of disturbance area, as defined in paragraph 4 above, for each lot or parcel without demonstrating hardship due to physical constraints caused by the topography of the lot.

6. Streets. The alignment, design and maximum grade for all streets within the proposed development on the Property shall be as depicted on the attached Site Plan.

7. Cut and Fill on Lots. The parties recognize that reasonable development may require cuts and fills. All proposed areas of cut and fill on lots shall meet the following requirements:

   a. Generally, cut and fill areas shall be minimized. However, reasonable cuts and fills may be allowed if necessary to construct a one-story home. Generally, screened cut areas are preferred over fill areas.

   b. All cut and fill areas shall be located within, and included in the maximum limits of disturbance area for each lot, as provided in paragraph 4 above.

   c. All cut and fill areas shall be re-contoured to the natural, varied contour of surrounding terrain with a maximum tapered slope back to natural grade of not greater than 2:1.

   d. All areas of cut and fill shall be temporarily protected from erosion during the period of construction and shall be revegetated or otherwise protected from erosion before receiving a certificate of occupancy.

   e. Where reasonably practicable, no fill areas shall exceed three (3) vertical feet, measured from the naturally occurring grade. All non-retained fill slopes shall be re-contoured to the natural, varied contour of surrounding terrain with a maximum tapered slope back to natural grade of not greater than 2:1.

   f. Cut areas on lots shall be allowed for the purpose of siting a primary structure or in areas that are screened from view along Highway 91.

   g. Feathering cut and filled areas back to the natural, varied contour of the surrounding terrain is encouraged in lieu of the use of retaining walls.

8. Landscaping and Re-vegetation. A Landscape Plan for the development improvements (as opposed to individual lots) shall be provided during the subdivision approval process, prepared by a registered landscape architect, that identifies all proposed landscape, screening and buffering features and materials, significant natural features; proposed plant materials list with type, quantity, size and compatibility with the natural landscape; location and species of plant materials existing on the site; and methods for the re-vegetation of all disturbed areas. All proposed plant materials should be drought tolerant. Native vegetation shall be identified and preserved to the maximum extent possible in the landscape plan.

9. Development Plan and Design Guidelines. In order to further protect the interests of the City, and to preserve the quality, beauty and integrity of the proposed development,

the Parties shall develop a Development Plan and Design Guidelines that are consistent with this Agreement and that will be incorporated into the Owner's covenants, conditions and restrictions (CC&R's), as well as into a Development Agreement between the Owner and the City that will be part of Owner's Preliminary Plat approval. Such Development Plan and Design Guidelines shall address the following:

a. Conceptual Site Plan:
   i. Site Plan;
   ii. Residential Lots; and
   iii. Public Amenities.

b. Development Principles:
   i. Desert Vernacular Style;
   ii. Site-sensitive Design;
   iii. Sense of Arrival;
   iv. Sense of Place (including streetscape, medians, landscaping, lighting and street signage); and
   v. Sense of Community.

c. Natural Areas and Trails:
   i. Natural Areas; and
   ii. Trails and Circulation.

d. Design Guidelines:
   i. Purpose and Powers of the Design Guidelines;
   ii. Site Design Guidelines (including limits of disturbance, streets and driveways, grading);
   iii. Architectural Guidelines (including form and massing, roof, windows, entries and porches, patios, garages and parking, lighting, building systems and accessories, and approved building materials, colors, and reflectivity); and
   iv. Landscape Guidelines (including residential landscape design and preferred plant species).

e. Design Review
   i. Design Review Committee (including establishment and duties.

10. Application Process. Upon approval and execution of this Agreement, Owner may file a Preliminary Plan application with the City for its proposed development on the Property that complies with the requirements of this Agreement and the City's current Subdivision Ordinance. The decisions of applicable Land Use Authorities (i.e. Zoning Administrator, Sensitive Lands Committee, Planning Commission and City Council) governing subdivision applications for development of the Property shall be consistent with and governed by the terms of this Agreement.

11. As part of the approval process for a subdivision on the Property, the parties shall enter into a detailed Development Agreement that conforms to the terms of this Settlement Agreement

and that addresses all of the elements required in a Written Text under the City's prior Zoning Ordinance, as well as all of the elements required by the City's current Subdivision Ordinance. The executed Development Agreement shall be approved by the Ivins City Council prior to becoming effective and shall be a condition of Final Plat approval for any development on the Property. Also as part of the approval process shall be the ratification of the prior division of a larger parcel of land by the dedication of Normandy Road which resulted in the Property becoming a separate parcel.

12. The parties agree that in the event that unforeseen, unanticipated, or particular circumstances arise related to the development of the Property or construction thereon or on any lot within the proposed subdivision, the parties and/or the lot owner shall negotiate in good faith to resolve such issues to allow for reasonable development and construction on the Property and the lots thereon in accordance with the parties' intent to mitigate visibility from Highway 91.

13. The City agrees to review any and all submittals with regard to the Property or any construction thereon in good faith and in a timely manner. The City shall review, process, and treat all such submittals in the same manner as with regard to any other property or subdivision within the City.

14. Dismissal of Civil No. 040501540, Quality Development, LLC vs. Ivins City. The parties hereto agree that Owner's pending litigation against the City shall remain dormant while Owner obtains approval of its proposed development on the Property in accordance with the provisions outlined herein. In the event Developer elects to develop the Property in phases, Developer shall seek and obtain Final Plat approval for the entire subdivision master plan and then be allowed to record each phase according to the schedule set forth in the Development Agreement with Ivins City. Upon Owner obtaining Final Plat approval of a subdivision on the Property, or in the event Owner sells, transfers or assigns its interest in the Property or in the event more than 20% of the ownership interest of a party designated herein as Owner is sold, transferred or assigned (other than Owner forming a new entity comprised of the parties designated herein as Owner and not any new parties), prior to obtaining Final Plat approval, Quality Development, LLC shall immediately dismiss with prejudice Civil No. 040501540, Quality Development, LLC vs. Ivins City and Owners not a party to that action shall execute a release waiving the same claims raised in that action.

15. Controlling Law and Venue. This Agreement has been made under the laws of the State of Utah and such laws shall control its enforceability. Any action to interpret or enforce this Agreement shall be brought in the Fifth District Court in and for Washington County, State of Utah.

16. Binding on Heirs and Assigns. The terms and conditions of this Agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

17. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes any prior or concurrent agreements; no oral or written terms or conditions which are not expressly contained in this Agreement shall be binding. This Agreement may not be amended except by written agreement of the parties.

This Agreement shall become effective when executed by the parties and approved by the Ivins City Council.

OWNER:

QUALITY DEVELOPMENT, LLC

Ed Burgess
Manager

Dated: 8-14-06

DUCKY & DUCKIE. LTD.

Manager H. Allan Carter, Mgr of Zorch, L.C., the General Partner

Dated: 8/14/06

JKE, LC.

Manager

Dated: 8/14/06

EDWARD L. BOWLER, Individually

Dated: 8/14/06

STAN BLAKE, Individually

Dated: 8/14/06

IVINS CITY:

R. Daren Barney, Mayor

Dated: 8 8 2006

IVINS CITY Corporate Seal WASHINGTON COUNTY

Attest:

Terri Fabio, City Recorder

EXHIBIT "A"

Comanche Cliffs Subdivision – Quality Development

[Summary]

~June 2004:	Zoning Administrator fields telephone inquiry as to Land Use/Zoning/Density re: property in question. -Told caller that property was "Low Density," zoned "PD" -that the "PD" zone did not establish any base density and that the maximum density allowed in "Low Density" would be 2.5 units/acre.
7/30/04	City Council Agenda posted giving notice of proposed Temporary Ordinance affecting hillside development
8/2/04 a.m.	Zoning Administrator meets with Developer(s) -Told them that the City Council had noticed a public meeting for 8/5/04 for the adoption of a Temporary Ordinance that would affect hillside development.
8/2/04 p.m.	Developers file Concept Plan Application & Fee with the City
8/5/04	City Council adopted the Temporary Ordinance affecting hillside development. (Ord. No. 2004-20)
8/11/04	Development Review Committee meeting to consider the Developers' Concept Plan -Staff Report requires a second road access into the property for public safety reasons.
8/31/04	Staff Report on Concept Plan made to Planning Commission
9/2/04	Staff Report on Concept Plan made to City Council
~9/3/04	Quality Development files suit alleging invalidity of Temporary Ordinance.
Nov-Jan	Staff meetings with Developers regarding their input on proposed Sensitive Lands Ordinance; Developers participate in numerous public hearings before the Planning Commission and City Council giving their input on the proposed Sensitive Lands Ordinance.
2/3/05	Sensitive Lands Ordinance adopted by City Council. (Ord. No. 2005-03)
3/11/05	Ivins City accepts service of Summons & Complaint.