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Right of Way Page 1 of 16
Russell Shirts Washington County Recorder
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**DECLARATION OF COVENANTS AND GRANT OF
ACCESS RIGHTS FOR ARCHEOLOGICAL SITE PRESERVATION**

This Declaration Of Covenants And Grant Of Access Rights For Archeological Site Preservation (herein referred to as the “**Declaration**”), is made as of the 5th day of June, 2007, by, between and among PUB Rocky Road, LC, a Utah limited liability company, and Quality Venture One, LC, a Utah limited liability company, Quality Development, LLC, a Utah limited liability company, KDQD, L.L.C., a Utah limited liability company, Kerry Holt Farms, Ltd., a Utah limited partnership, (herein collectively referred to as the “**Declarants**”).

RECITALS:

A. The Declarants each own fee simple interests, whether solely or as tenants-in-common, in certain real property in Washington County, Utah, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Property**").

B. Portions of the Property contain Native American rock art (a.k.a., Petroglyph) components and elements, and other features of archeological and Native American significance.

C. The Property was formerly owned by the United States, and managed by the Department of the Interior’s Bureau of Land Management (“**BLM**”).

D. In 1998, the BLM, the Declarants’ predecessor in title to the Property, the Utah State Historic Preservation Office, the City of St. George, and the Advisory Council on Historic

Preservation entered into that certain Memorandum Of Agreement For The Fort Pearce Wash Desert Tortoise Exchange Tract, signed by Declarants' predecessor in title on July 17, 1998 (the "**Memorandum**").

E. Pursuant to the Memorandum, which by its terms is binding on the successors and assigns of the parties thereto, the Declarants' predecessor in title agreed that rock art sites 42Ws3061, 42Ws3063, 42Ws3149, and 42Ws3152 (the legal descriptions of which are more particularly described in Exhibit "B" attached hereto and incorporated herein (the "**Rock Art Sites**")) be perpetually protected from alteration, damage, or moving, and that pedestrian access to such sites be provided for legitimate scientific purposes and for traditional Native American uses.

F. The purpose of this document is to provide for the protection and preservation of, and access to, the Rock Art Sites, as required by the Memorandum.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarants for themselves and their respective successors, assigns, representatives, invitees and lessees, hereby declare as follows:

**ARTICLE I
PROTECTION & PRESERVATION OF ROCK ART SITES**

1. To assure the protection and preservation of the Rock Art Sites, Declarants by this Declaration hereby establish the following covenants and restrictions with respect to the Rock

Art Sites, which covenants and restrictions are intended for the benefit of those engaging in legitimate scientific purposes and traditional Native American uses, as further provided herein, and for the benefit of the Property and each owner of any interest therein, whether present or future, and which shall inure to, pass with, and be binding on the Property and each and every interest therein.

2. Declarants shall in no way alter, damage, destroy, or move the Rock Art Sites or any boulders, stone faces, or rock sheets bearing Native American rock art or containing Native American graves within the confines of the Rock Art Sites. Site context, however, may be altered through the construction on lands adjacent to the Rock Art Sites of buildings, roads, sidewalks, trails, signs, fences, landscaped and vegetated surfaces, and subdivision improvements.

ARTICLE II ACCESS TO ROCK ART SITES

1. Declarants hereby grant to all persons engaged in legitimate scientific purposes, and traditional Native American uses, a private, perpetual, non-exclusive right of reasonable pedestrian access from public roads to the Rock Art Sites over and across those portions of the Property that Declarants shall designate for such purposes. Declarants shall not be required, however, to provide vehicle parking or make the Rock Art Sites handicapped-accessible. Access to the Rock Art Sites for recreational viewing by the general public shall be permitted at Declarants' sole discretion.

2. Declarants reserve the right to remove, and declare as a trespasser, any person threatening or damaging the Rock Art Sites, or who disturbs the peaceful enjoyment of

Declarants in the use and occupancy of the other portions of the Property. Declarants may take reasonable measures to exclude from the Rock Art Sites any persons who are not pursuing legitimate scientific purposes, or traditional Native American uses. Due to security concerns, Declarants may exclude all persons from the Rock Art Sites during non-daylight hours.

3. Declarants reserve the right at any time to change the location of any point of access to any of the Rock Art Sites, so long as reasonable pedestrian access remains.

4. The access rights established by this Declaration shall be limited solely to the uses described herein, and the same is not intended and shall not be construed as creating any rights in or for the benefit of the general public. Declarants shall have the right, exercisable one day each calendar year, to erect barriers across the points of access, which Declarants shall designate as provided herein, for the exclusive purpose of interrupting use of the access points to ensure that such use shall not constitute the continuous use "as a public thoroughfare for a period of ten years" that is required in establishing a public highway under Utah Code § 72-5-104.

5. If Declarants develop or otherwise improve any of the Property, they shall consider, but are not required to provide, development options that provide access by the general public to the Rock Art Sites. Declarants shall also consider land improvements of the Property, or non-improvement of portions of the Property, that tend to enhance the aesthetic appeal of the Rock Art Sites.

**ARTICLE III
RIGHTS OF DECLARANTS**

Declarants may exercise any right or privilege given to them expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to them herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE IV
ENFORCEMENT**

1. The right to enforce the terms and conditions, covenants and easements contained herein shall belong solely to Declarants, the signatories to the Memorandum, and those persons intended to benefit from the access rights granted in Article II of this Declaration. Upon transferring title to any substantial portion of the Property, Declarants may, in their sole discretion, assign and convey all of their rights hereunder to enforce this Declaration to a homeowners association, government agency, or non-profit entity that will agree to preserve and protect the Rock Art Sites.

2. In the event of any violation or threatened violation of any of the terms and conditions contained herein, any person entitled to enforce this Declaration shall have, as its sole remedy, the right to enjoin such violation or threatened violation in a court of competent jurisdiction; provided, however, that no such person may enforce this Declaration by recording a lien against the Property.

3. If performance of any act or obligation hereunder by Declarants is prevented or delayed by an act of God, war, labor disputes, act of government or other cause beyond the reasonable control of Declarants, the time for the performance of the act or obligation shall be extended for the period that such act or performance is actually delayed or prevented by any such cause.

4. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

**ARTICLE V
DURATION**

This Declaration and each right, covenant and restriction hereby created shall endure in perpetuity, unless earlier, terminated, modified, or amended by a written instrument executed by the signatories to the Memorandum, or their successors and assigns, and Declarants, acknowledged and duly recorded in the Office of the Recorder of Washington County, State of Utah.

**ARTICLE VI
AMENDMENTS OR MODIFICATIONS**

1. This Declaration and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended only with the written consent of the signatories to the Memorandum or their successors and assigns, and the owners of at least ten (10%) of the gross acreage of the Property; provided, however, that no termination, extension, modification or amendment of this Declaration shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the Office of the Recorder of Washington County, State of Utah.

2. Under no circumstances may Rock Art Site 42Ws3061 be altered, damaged, or destroyed. Should there ever arise an overriding reason and need to alter, damage, or destroy any or all of the three Rock Art Sites described herein as 42Ws3063, 42Ws3149, and 42Ws3152

(collectively the "3 Sites"), any Declarant shall so inform the other Declarants and the signatories to the Memorandum, and request that the signatories agree to such activities. In the event the signatories to the Memorandum agree in writing to the request to alter, damage or destroy any of the rock art found in any or all of the 3 Sites, the signatories' agreement shall be binding on all of the Declarants, and this Declaration shall be modified accordingly, and duly recorded upon the signature of any Declarant in the Office of the Recorder of Washington County, Utah.

**ARTICLE VII
MISCELLANEOUS**

1. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or to any public entity for any public purposes whatsoever, it being the intention that this Declaration shall be strictly limited to and for the purposes expressed herein.
2. Severability. In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Declaration and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
3. Covenants Run With Land. Each and all of the covenants, restrictions, and provisions contained in this Declaration (whether affirmative or negative in nature) shall: (a) be deemed to be covenants which run with the land; (b) exist for the direct benefit of the class of

persons to whom the access right is granted hereunder; (c) create equitable servitudes upon each divisible or non-divisible portion of the Property in favor of the class of persons to whom the access right is granted hereunder; (d) bind every person having any fee, leasehold, or other interest in any portion of the Property at any time; and (e) inure to the benefit of the Declarants and their respective successors and assigns.

4. Benefit and Burden. The terms, covenants, and conditions contained herein shall inure to the benefit of and shall be binding upon the Declarants and their respective successors, assigns, agents, representatives, employees, lessees, and invitees, and any other person having any interest in the Property and the Rock Art Sites and their respective heirs, legal representatives, successors, and assigns.

5. Intent and Purpose. The provisions of this Declaration, and any supplemental or amended declaration, shall be liberally construed to effectuate the purpose of protecting and preserving, and providing access to the Rock Art Sites. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

6. Construction. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The articles and section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any article, section, or provision hereof.

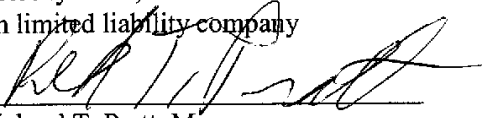
7. Damage to Rock Art. Nothing in this Declaration or the Memorandum infers, or shall be taken to infer, that Declarants have an affirmative duty to protect and preserve the Rock Art Sites from damage caused by the acts of others, nor shall Declarants be in any way liable or responsible for vandalism, theft, or acts of malicious mischief by others to or against the Rock Art Sites.
8. Time is of Essence. In construing this Declaration, time shall be deemed of the essence.
9. Effective Date. This Declaration shall take effect immediately upon recording.
10. Owner Obligations. Declarants shall have no personal liability or obligation to expend funds to preserve and protect the Rock Art Sites, except as shall be required to establish the access to the Rock Art Sites provided in this Declaration.
11. Not a Partnership. The parties hereto do not by this Declaration, in any way or for any purpose, become partners or joint venturers in the ownership of the Property.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration on the dates indicated below to be effective as of the day and year first above written.

DECLARANTS:

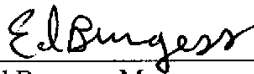
PUB Rocky Road, LC
a Utah limited liability company

June 5, 2007
Date

By: 
Richard T. Pratt, Manager

Quality Venture One, LC
a Utah limited liability company

June 6, 2007
Date

By: 
Ed Burgess, Manager

June 6 2007
Date

Quality Development, LLC
a Utah limited liability company

By: Lori Burgess
Lori Burgess, Manager

Date

Kerry Holt Farms, Ltd.
a Utah limited partnership

By: _____
Kerry Holt, General Partner

Date

By: _____
Dee Ann Holt, General Partner

KDQD, L.L.C.
a Utah limited liability company

By its Managers:

K & D Family, L.L.C.
a Utah limited liability company

Date

By: _____
Dee Ann Holt, Manager

Date

By: _____
Kerry Holt, Manager

Date

By: _____
Michael Singleton, Manager

Quality Development, LLC
a Utah limited liability company

June 6 2007
Date

By: Lori Burgess
Lori Burgess, Manager

June 6 2007
Date

Quality Development, LLC
a Utah limited liability company

By: Lori Burgess
Lori Burgess, Manager

6-6-07
Date

Kerry Holt Farms, Ltd.
a Utah limited partnership

By: Kerry Holt
Kerry Holt, General Partner

6-6-07
Date

By: Dee Ann Holt
Dee Ann Holt, General Partner

KDQD, L.L.C.
a Utah limited liability company

By its Managers:

6-6-07
Date

K & D Family, L.L.C.
a Utah limited liability company

By: Dee Ann Holt
Dee Ann Holt, Manager

6-6-07
Date

By: Kerry Holt
Kerry Holt, Manager

6-6-07
Date

By: Michael Singleton
Michael Singleton, Manager

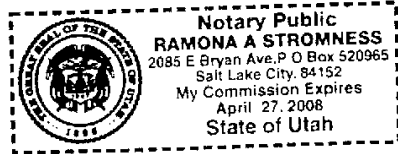
June 6 2007
Date

Quality Development, LLC
a Utah limited liability company

By: Lori Burgess
Lori Burgess, Manager

STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

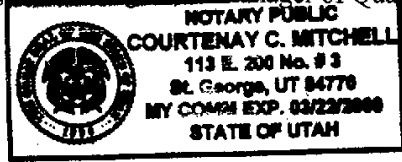
The foregoing instrument was acknowledged before me this 5th day of June, 2007, by Richard T. Pratt, as manager of PUB ROCKY ROAD, LC, a Utah limited liability company.



Ramona A Stromness
Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF Washington)

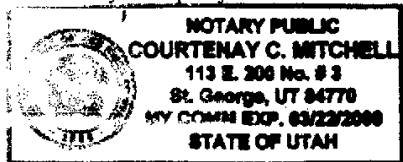
The foregoing instrument was acknowledged before me this 6th day of June, 2007, by Ed Burgess, as manager of Quality Venture One, LC, a Utah limited liability company.



Courtenay C. Mitchell
Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF Washington)

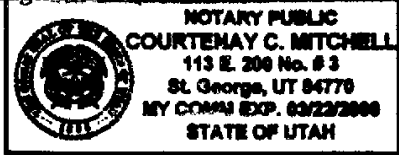
The foregoing instrument was acknowledged before me this 6th day of June, 2007, by Lori Burgess, as manager of Quality Development, LLC, a Utah limited liability company, and in Quality Development, LLC's capacity as a manager of KDQD, L.L.C., a Utah limited liability company.



Courtenay C. Mitchell
Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF Washington)

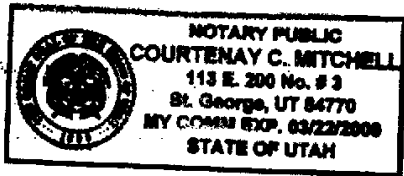
The foregoing instrument was acknowledged before me this 6th day of June, 2007, Dee Ann Holt, Kerry Holt, and Michael Singleton, in their capacities as managers of K & D Family, L.L.C., a Utah limited liability company, in K & D Family, L.L.C.'s capacity as manager of KDOD, L.L.C., a Utah limited liability company.



Courtenay C. Mitchell
Notary Public

STATE OF UTAH)
COUNTY OF Washington ss.

The foregoing instrument was acknowledged before me this 6th day of June, 2007, by Kerry Holt and Dee Ann Holt, as general partners of Kerry Holt Farms, Ltd., a Utah limited partnership.



Courtenay C. Mitchell
Notary Public

Exhibit A

Salt Lake Meridian, Utah

T. 43 S., R. 15 W.,

Sec. 8, lot 2;

Sec. 25, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 26, all;

Sec. 27, all;

Sec. 34, lots 1-4, N $\frac{1}{2}$;

Sec. 35, lots 1-4, N $\frac{1}{2}$;

T. 43 S., R. 16 W.,

Sec. 22, lot 23;

Sec. 27, lot 2,

Containing 2,731.81 acres.

Exhibit B

3061

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89E58'56" EAST 5,851.02 FEET; THENCE PARALLEL TO THE EAST LINE OF SAID SECTION 27, NORTH 0E01'04" EAST 952.01 FEET TO THE POINT OF BEGINNING; THENCE NORTH 4E14'20" WEST 134.73 FEET; THENCE NORTH 84E15'52" EAST 131.65 FEET; THENCE SOUTH 9E34'35" EAST 116.04 FEET; THENCE SOUTH 76E43'56" WEST 144.19 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,213 SQUARE FEET OR 0.395 ACRES, MORE OR LESS

3063

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89E58'56" EAST 2,290.88 FEET; THENCE PARALLEL TO THE EAST LINE OF SAID SECTION 27, SOUTH 0E01'04" WEST 1,187.71 FEET TO THE POINT OF BEGINNING: THENCE SOUTH 50E15'37" EAST 104.67 FEET; THENCE SOUTH 32E57'28" WEST 247.86 FEET; THENCE NORTH 42E30'04" WEST 201.55 FEET; THENCE NORTH 56E27'40" EAST 228.58 FEET TO THE POINT OF BEGINNING.

CONTAINS 35,634.75 SQUARE FEET OR .808 ACRES, MORE OR LESS

3149

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG THE EAST LINE OF SAID SECTION 27, NORTH 0E01'04" EAST 3,654.63 FEET; THENCE NORTH 89E58'56" WEST 4,533.94 FEET TO THE POINT OF BEGINNING: THENCE NORTH 87E47'39" WEST 154.58 FEET; THENCE NORTH 73E00'41" WEST 145.31 FEET; THENCE NORTH 19E06'35" EAST 112.17 FEET; THENCE SOUTH 69E38'41" EAST 282.80 FEET; THENCE SOUTH 8E33'42" WEST 56.66 FEET TO THE POINT OF BEGINNING.

CONTAINS 27,148 SQUARE FEET OR 0.623 ACRES, MORE OR LESS

3152

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING

THENCE SOUTH 89E58'56" EAST 4,847.36 FEET; THENCE PARALLEL TO THE EAST LINE OF SAID SECTION 27, SOUTH 0E01'04" WEST 1,281.80 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 43E52'57" EAST 155.65 FEET; THENCE SOUTH 44E59'09" WEST 185.72 FEET; THENCE NORTH 45E35'28" WEST 155.51 FEET; THENCE NORTH 44E57'03" EAST 190.36 FEET TO THE POINT OF BEGINNING.

CONTAINS 29.251 SQUARE FEET OR 0.671 ACRES, MORE OR LESS.