

Ent **543382** Bk **928** Pg **85**
Date: 15-Dec-2021 04:36 PM
Fee: \$40.00 ACH
Filed By: JAC
JOHN CORTES, Recorder
GRAND COUNTY CORPORATION
For: Cottonwood Title Insurance A
Recorded Electronically by Simplifile

WHEN RECORDED MAIL TO:

Red Cliffs Partners, LLC
748 W. Heritage Park Blvd., Ste. 203
Layton, Utah 84041
Parcel Nos. 06-0RED-0002, 06-0RED-0003 & 06-0RED-0004
147380-MCC

COLLECTION BOX AND PIPELINE OMR&R AGREEMENT

(Red Cliffs Lodge)

This COLLECTION BOX AND PIPELINE OMR&R AGREEMENT (this “Agreement”), is entered into as of the 13th day of December, 2021, by and between Colin Don Fryer (“Seller”), and KGMC Legacy Cottages of Layton, LLC, a Utah limited liability company, as to an undivided 24.27% interest, KTG Red Cliffs, LLC, a Utah limited liability company, as to an undivided 15.83% interest and Red Cliffs Partners, LLC, a Utah limited liability company, as to an undivided 59.90% interest (collectively “Buyer”) (individually, a “Party,” and together, the “Parties”).

RECITALS:

WHEREAS, Seller and Buyer are engaged in a transaction by which Seller is selling to Buyer those portions of the Red Cliffs Ranch identified as Parcels B and C on the final plat for the Red Cliffs Ranch, titled the “Red Cliffs Ranch Amended,” (Parcels B and C are more particularly described in Exhibit B-1 attached hereto), a copy of which plat is attached hereto as Exhibit A, and which plat is referred to herein as the “Plat,” together with certain infrastructure, water rights, fixtures, and appurtenances associated with Parcels B and C;

WHEREAS, Seller is retaining ownership of Parcel A identified on the Plat (Parcel A is more particularly described in Exhibit B-2 attached hereto);

WHEREAS, Seller owns Water Right No. 05-567, which is authorized to divert up to, and when available, 253.26 acre-feet (“AF”) of water to irrigate 41.51 acres of land and water 150 head of livestock on Parcel A;

WHEREAS, as part of the transaction, Seller will convey to Buyer Water Right No. 05-4038, which Seller segregated from a larger Water Right No. 05-567 in anticipation of the transaction, which Water Right No. 05-4038 is authorized to divert up to, and when available, 68.94 AF of water to irrigate 11.49 acres of land on Parcel B;

WHEREAS, Water Right No. 05-567 and Water Right No. 05-4038 (the “Water Rights”) are cumulatively authorized to divert up to, and when available, 322.2 AF of water annually from Castle Creek in Grand County, Utah, with Water Right No. 05-567 representing 78.60% of the cumulative total and Water Right No. 05-4038 representing 21.40% of the cumulative total;

WHEREAS, the Water Rights share an authorized Point-of-Diversion on land immediately to the South of Parcel C, located at approximately North 1997 feet, West 1353 feet, from the South

East Corner of Sec. 35, T24S, R22E, SLBM, on land owned by the U.S. Bureau of Land Management Land (the “BLM Parcel”);

WHEREAS, Castle Creek water is diverted under the Water Rights from a diversion structure (the “Diversion”) into a concrete collection box facility (the “Collection Box”) located at or near the authorized Point-of-Diversion;

WHEREAS, the Collection Box connects to a 12-inch underground irrigation pipeline that crosses the BLM Parcel and a portion of Parcel C (the “Pipeline”);

WHEREAS, Seller has historically operated, maintained, and repaired the Diversion, the Collection Box and the Pipeline (collectively referred to herein as the “Water Facilities,”), and has a working knowledge of the Water Facilities;

WHEREAS, Seller is believed to have a Right-of-Way from the U.S. Bureau of Land Management to access the Water Facilities located on the BLM Parcel and operate, maintain, repair and replace the Water Facilities, but has been unable to locate a recorded document; and

WHEREAS, use of the BLM Parcel to access, operate, maintain, repair and replace the Water Facilities has been longstanding and in excess of 20 years; and

WHEREAS, to account for unrecorded historic uses of water conveyance facilities, Utah Code Ann. § 57-13a-102 recognizes criteria to establish a “Prescriptive Easement for Water Conveyance;”

WHEREAS, the Plat establishes a “20’ Irrigation Line Easement” across Parcel C, which is more particularly described on Exhibit C to this Agreement (the “Pipeline Easement”);

WHEREAS, the Pipeline splits at an underground point generally located near Mile Post 14 on Highway 128, and the two Pipeline segments separately bring water to independent irrigation systems used to irrigate the acreage on Parcel A and Parcel B; and

WHEREAS, the Parties desire an Agreement establishing Operations, Maintenance, Repair, and Replacement (“OMR&R”), and related responsibilities for components of the Water Facilities up to and including the point where the Pipeline splits and delivers water separately to Parcel A and Parcel B (the “Shared Components”),

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and benefits contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this Agreement.

2. Conveyance of Interest in Shared Components: Seller agrees to convey to Buyer, by quit claim deed, an undivided 21.40% interest in the Shared Components, to be held as tenants in common.

3. Access to BLM Parcel:
 - a. Seller agrees to convey to Buyer, by quit claim deed, an undivided interest in the Right-of-Way held or claimed to be held by Seller, by whatsoever instrument, agreement or operation of law, on and across the BLM Parcel to access, operate, maintain, repair and replace the Shared Facilities.

 - b. In the event Buyer must use Utah Code Ann. § 57-13a-102 to establish a prescriptive easement for such purposes, Seller agrees to provide any documentation or history of use of the BLM Parcel needed to meet the criteria of the statute or other legal requirements.

4. Access to Parcel B: Buyer acknowledges the Pipeline Easement and recognizes Seller has a right of access to conduct all OMR&R activities and related responsibilities for the Shared Components. Except for non-routine modifications, noted below, Buyer does not require advanced or other notice for Seller to access and use the Pipeline Easement for its intended purposes.

5. Operation, Maintenance, Repair, and Replacement Responsibilities:
 - a. The Parties agree to use the Shared Components in a manner that promotes the integrity and longevity of the infrastructure and will refrain from activities that jeopardize the function and purpose of the Shared Components.

 - b. Seller has a working knowledge of the Shared Components and the Parties agree Seller shall be the Party primarily responsible for overseeing OMR&R responsibilities for the Shared Components.

 - c. OMR&R responsibilities include, but are not limited to, monitoring the Shared Components in the regular course of irrigating Parcel A, purchasing parts and components needed for OMR&R, personally performing routine maintenance, hiring contractors or other qualified professionals to conduct work on the Shared Components, securing permits, and other activities generally related to maintaining the Shared Components in good working order. Seller agrees to timely conduct all OMR&R responsibilities in a manner that avoids damage to and preserves Parcel C in good condition.

 - d. If in the regular course of business Buyer is made aware of a problem or unfavorable condition in the Shared Components, Buyer shall timely make Seller aware of the issue and request remedial actions.

- e. If completing an OMR&R task requires digging with mechanized equipment or any non-routine activities that disrupt the existing condition of Parcel C or disrupt water service through the Shared Components, Seller will give Buyer three days notice of the disruption, and shall postpone such work to a mutually agreeable date if reasonably requested by Buyer. This provision does not apply to emergency situations.
- f. Buyer shall have the absolute right to perform any reasonably required OMR&R work on the Shared Components if Seller fails to do so in a timely fashion. In such event, Buyer shall be entitled to reimbursement of a portion of the costs of such work, in the same manner described for reimbursement to Seller in Section 6 below.

6. Operation, Maintenance, Repair, and Replacement Costs:

- a. Seller is authorized to make individual purchases and/or retain professional services in an amount not exceeding \$2,500 that, in Seller's judgement, Seller determines is prudent to fulfill general OMR&R responsibilities. Individual purchases or services exceeding \$2,500 require consultation with Buyer, acceptance of which is not to be unreasonably withheld. If cumulative individual costs exceed \$5,000 in a calendar year, Seller will consult with Buyer on additional purchases or services, acceptance of which is not to be unreasonably withheld.
 - b. The Parties agree to proportionally share any and all OMR&R costs for the Shared Components. Proportional costs are to be determined according to the percentages set forth in the Recitals. Buyer is responsible for allocating its portion of OMR&R costs amongst Red Cliffs Partners, LLC, KGMC Legacy Cottages of Layton, LLC, and KTG Red Cliffs, LLC and any future successors or other corporate divisions.
 - c. Seller shall promptly send a written request for payment to Buyer for Buyer's proportionate share of OMR&R costs. Such requests can either be prior to expending funds or as a reimbursement to Seller. Buyer agrees to pay such costs within 30 days of a written request. In the event of non-payment, Seller reserves all rights and opportunities under law to seek or compel payments due.
7. Mutual Indemnification. The Parties agree to indemnify, defend, and hold each other harmless from and against any and all injuries, liabilities, costs, claims, charges, lawsuits, expenses, and damages, of whatever nature, associated with OMR&R of the Shared Components. This provision includes, but is not limited to, reasonable attorney fees and costs. This provision does not apply if such consequences are caused by the grossly negligent or intentional acts of either Party.
8. Amendment and Termination. This Agreement may be amended and/or terminated only by a written agreement signed by the Parties, their successors, or assigns.
9. Successors and Assigns: All of the terms and conditions of this Agreement shall run with the land and shall be binding on the Parties, their successor, heirs, administrators, and

assigns. Assignment of this Agreement shall only occur upon written notice and agreement of the Parties, such agreement is not be unreasonably withheld; provided, however, that either Party may assign its interest herein in connection with any financings associated with the benefitted Parcels.

10. Notice. Any notices required under the Agreement shall be sent to the following. The identified Party identified as Buyer is responsible for communicating notice to its corporate partners. Buyer may also designate in writing a different point-of-contact that resides on is more generally located at the lodging facilities located on Parcel B.

Seller: Colin Don Fryer
Mile Post 14 Highway 128
Moab UT 84532
(435) 260-1777
colin@redcliffslodge.com

Buyer: Red Cliffs Partners, LLC
748 W. Heritage Park Blvd., Ste. 203
Layton, Utah 84041

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Performance and venue shall be in Grand County.
12. Attorneys' Fees. In the event that legal action arises out of or relates to the terms of this Agreement, the prevailing Party shall be entitled to collect its costs of court including reasonable attorneys' fees.
13. Severability. If any provisions of this Agreement are held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such provision had never comprised a part of this Agreement. The remaining provisions of this Agreement will remain in full force and effect provided that both parties may still effectively realize the complete benefit of the transaction.
14. Further Documents. Both Parties shall execute such documents hereafter from time to time as may be required to carry out the respective obligations of the Parties hereunder.

(signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Collection Box and Pipeline OMR&R Agreement to be executed as of the date first above written.

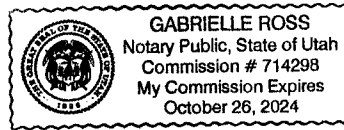
SELLER:

Colin Don Fryer
Colin Don Fryer

STATE OF UTAH)
 :SS.
COUNTY OF Davis)

On the 13 day of December, 2021, personally appeared before me Colin Don Fryer, the signer of the above instrument, whose identity was proven to me on the basis of satisfactory evidence, and acknowledged to me that he signed the same.

Gabrielle Ross



BUYER:

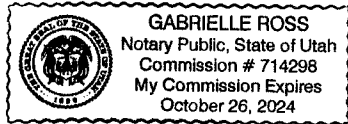
KGMC Legacy Cottages of Layton, LLC

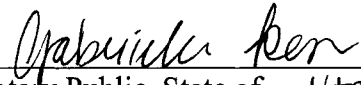
By: 
Kevin S. Garn, Manager

STATE OF UTAH §
 §
COUNTY OF DAVIS §

Before me, the undersigned authority, a Notary Public, on this day personally appeared KEVIN S. GARN, as Manager of KGMC LEGACY COTTAGES OF LAYTON, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 13 day of December , 2021.




Notary Public, State of Utah

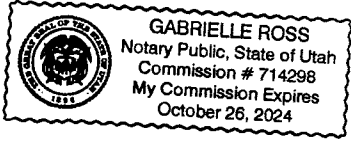
KTG Red Cliffs, LLC

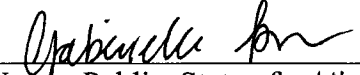
By: 
Kevin S. Garn, Manager

STATE OF UTAH §
 §
COUNTY OF DAVIS §

Before me, the undersigned authority, a Notary Public, on this day personally appeared KEVIN S. GARN, as Manager of KTG RED CLIFFS, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 17 day of December, 2021.




Notary Public, State of Utah

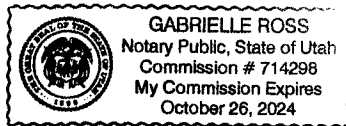
Red Cliffs Partners, LLC

By: 
Kevin S. Garn, Manager

STATE OF UTAH §
 §
COUNTY OF Davis §

Before me, the undersigned authority, a Notary Public, on this day personally appeared KEVIN S. GARN, as Manager of RED CLIFFS PARTNERS, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 13 day of December, 2021.




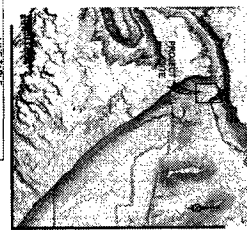

Notary Public, State of Utah

EXHIBIT A

[Here attach copy of Plat.]

Ent **543382** Bk **928** Pg **94**

RED CLIFFS RANCH AMENDED
 A PLANNED UNIT DEVELOPMENT LOCATED IN SECTIONS 28, 29, 30 & 31, T12N, R22E, S4M, GRAND COUNTY, UTAH. MAP NUMBER PARTICULARLY DESCRIBED AS FOLLOWS:
 SECTION 28, T12N, R22E, S4M
 SECTION 29, T12N, R22E, S4M
 SECTION 30, T12N, R22E, S4M
 SECTION 31, T12N, R22E, S4M
 GRAND COUNTY, UTAH



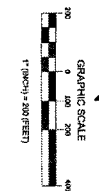
LINE NUMBER	START POINT	END POINT	BEARING	DISTANCE
1	N 0° 00' 00" E	100.00
2	S 90° 00' 00" E	100.00
3	N 0° 00' 00" E	100.00
4	S 90° 00' 00" E	100.00
5	N 0° 00' 00" E	100.00
6	S 90° 00' 00" E	100.00
7	N 0° 00' 00" E	100.00
8	S 90° 00' 00" E	100.00
9	N 0° 00' 00" E	100.00
10	S 90° 00' 00" E	100.00
11	N 0° 00' 00" E	100.00
12	S 90° 00' 00" E	100.00
13	N 0° 00' 00" E	100.00
14	S 90° 00' 00" E	100.00
15	N 0° 00' 00" E	100.00
16	S 90° 00' 00" E	100.00
17	N 0° 00' 00" E	100.00
18	S 90° 00' 00" E	100.00
19	N 0° 00' 00" E	100.00
20	S 90° 00' 00" E	100.00

STANDARD NOTES

- The Owner, Developer and the Subdivider of the Planned Unit Development herein are not responsible for the accuracy of the information shown on this map.
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SECTION	AREA	PERCENTAGE	PERCENTAGE	PERCENTAGE
28
29
30
31

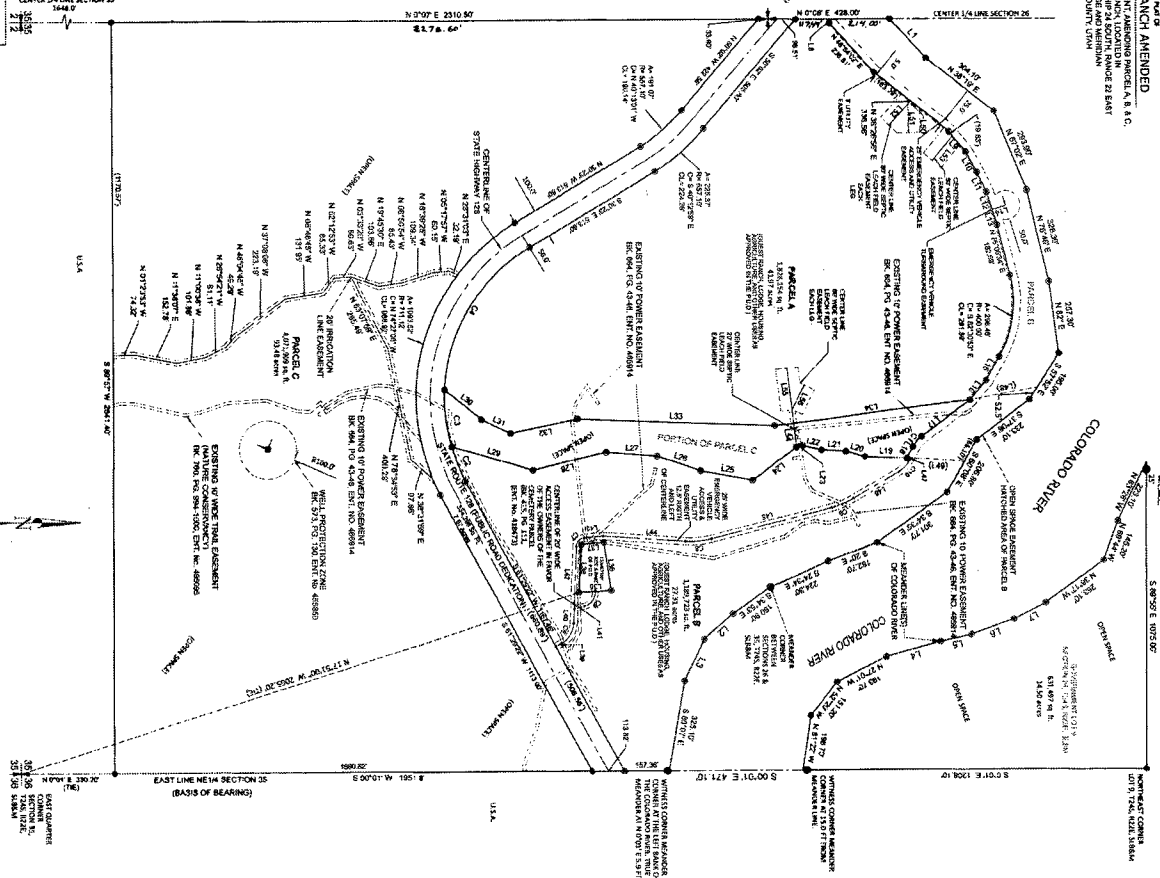
AMENDMENT NOTE
 THE PURPOSE OF THIS AMENDMENT IS TO CORRECT THE INTERIOR LOT LINES AND TO CORRECT THE PERCENTAGE OF THE TOTAL AREA OF THE PLANNED UNIT DEVELOPMENT WHICH IS TO BE DEVELOPED WITHIN EACH LOT AND LINDER WITHIN ABOVE CALCULATIONS.



COUNTY ENGINEERS APPROVAL
 APPROVED BY THE GRAND COUNTY ENGINEERS THIS 22nd DAY OF December 2021

COUNTY COUNCIL APPROVAL
 PRESENTED TO THE GRAND COUNTY COMMISSION THIS 22nd DAY OF December 2021 SUBMISSION APPROVED

COUNTY RECORDING NO. 543382
 STATE OF UTAH, GRAND COUNTY RECORDING IN THE REQUEST OF
 COLLIN DON E RICKER
 DATE 12-12-2021, BOOK 911, PAGE 700, SEE 54



ACKNOWLEDGMENT
 I, the undersigned, do hereby acknowledge that I am the owner of the above described land and that I have executed this instrument voluntarily and without duress, fraud, or coercion, and that I am not under any legal disability, and that I have read and understand the contents hereof, and that I have executed this instrument for the purposes and consideration therein expressed.

OWNERS DEDICATION
 I, the undersigned, do hereby dedicate and convey to the public use of the State of Utah, the above described land and other estate therein, together with all easements and appurtenances thereunto in anywise connected therewith, for the purposes and consideration therein expressed.

BOUNDARY DESCRIPTION
 A PLANNED UNIT DEVELOPMENT LOCATED IN SECTIONS 28, 29, 30 & 31, T12N, R22E, S4M, GRAND COUNTY, UTAH. MAP NUMBER PARTICULARLY DESCRIBED AS FOLLOWS:
 SECTION 28, T12N, R22E, S4M
 SECTION 29, T12N, R22E, S4M
 SECTION 30, T12N, R22E, S4M
 SECTION 31, T12N, R22E, S4M
 GRAND COUNTY, UTAH

SURVEYORS CERTIFICATE
 I, the undersigned, do hereby certify that I am a duly licensed and qualified surveyor in the State of Utah, and that I have surveyed the above described land and that I have executed this instrument for the purposes and consideration therein expressed.

RECORDING INFORMATION
 PROJECT: 168-18
 DATE: 12/21
 SHEET: 3 OF 1

EXHIBIT B-1

Parcels B and C, RED CLIFFS RANCH AMENDED, according to the official plat thereof on file in the office of the Grand County Recorder, recorded December 10, 2021 as Entry No. 543324 in Book 927 at Page 790.

(For Reference: Parcel No. 06-ORED-0002)
06-ORED-0003
06-ORED-0004

EXHIBIT B-2

Parcel A, RED CLIFFS RANCH AMENDED, according to the official plat thereof on file in the office of the Grand County Recorder, recorded December 10, 2021 as Entry No. 543324 in Book 927 at Page 790.

(For Reference: Parcel No. 04-02ED-0001)

EXHIBIT C

A 20' wide irrigation pipeline easement, located within Parcel C, Red Cliffs Ranch Amended, being 10' right and left of the described centerline as follows:

Beginning at a point being on center line of an existing irrigation pipe line, said point being North 77°23'36" West 1507.02 feet from the East Quarter corner of Section 35, Township 24 South, Range 22 East, Salt Lake Base and Meridian, and proceeding with said pipeline thence North 01°23'53" West 74.32 feet; thence North 11°38'07" East 152.78 feet; thence North 11°00'38" West 101.88 feet; thence North 26°54'21" West 81.11 feet; thence North 48°04'45" West 49.29 feet; thence North 37°08'08" West 223.19 feet; thence North 08°46'45" West 131.95 feet; thence North 52°12'53" West 65.33 feet; thence North 03°33'20" West 59.63 feet; thence North 19°45'30" East 103.66 feet; thence North 08°50'54" West 85.43 feet; thence North 18°39'25" West 109.34 feet; thence North 05°17'57" West 60.15 feet; thence North 23°31'03" East 32.19 feet to the point of terminus.

Also: Beginning at a point being on center line of an existing irrigation pipeline, said point being North 56°14'45" West 2098.52 feet from the East Quarter corner of Section 35, Township 24 South, Range 22 East, Salt Lake Base and Meridian, and proceeding with said pipeline thence North 63°07'59" East 285.49 feet; thence North 78°34'53" East 400.29 feet; thence North 38°31'59" East 97.86 feet to the point of terminus.