

Trust Deed Page 1 of 8

Russell Shirts Washington County Recorder  
 04/30/2019 11:20:01 AM Fee \$28.00 By  
 BARNEY MCKENNA & OLMSTEAD, P.C.

When recorded, mail to:

Barney McKenna & Olmstead, P.C.

Attn: Joseph T. Prete, Esq.

43 South 100 East, Suite 300

St. George, UT 84770

Parcel No. SG-5-3-5-13011; SG-5-3-5-1300; SG-5-3-5-1310

**TRUST DEED**

Howard D. Cottam and Valorie W. Cottam ("Trustors"), this 25th day of April, 2019, irrevocably warrants, grants, transfers, and assigns to Joseph T. Prete, Esq. of St. George, UT 84770 ("Trustee"), to hold in trust with power of sale for the benefit of Dale V. Ray and Phebe B. Ray, trustees, or successor trustees of the Dale & Phebe Ray Family Trust dated March 6, 1992, as amended and completely restated May 21, 2007, as may be subsequently amended ("Beneficiary"), the following described property (the "Property") situated in Washington County, Utah:

**SEE LEGAL DESCRIPTION ATTACHED HERETO AND  
 INCORPORATED HEREIN AS EXHIBIT A**

TOGETHER with all buildings, fixtures, and improvements now or hereafter erected on the Property, and all water rights, rights of way, easements, licenses, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances belonging to the Property, now or hereafter enjoyed with the Property or any part of the Property;

SUBJECT, however, to the right, power, and authority given to and conferred on Beneficiary in this Trust Deed to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING:

- payment of the indebtedness and all other lawful charges evidenced by the Promissory Note (the "Note") dated the same date as this Trust Deed, in the principal sum of \$58,000.00 made by Trustors payable to the order of Beneficiary, and any extension made or renewals of the Note;
- the performance of each obligation of Trustors contained in this Trust Deed;
- the payment of such additional amounts incurred for legal fees and costs owing Beneficiary on advances as hereafter may be made to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and

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the payment of all sums expended or advances by Beneficiary under or pursuant to the terms of this Trust Deed, together with interest thereon as provided in this Trust Deed.

TRUSTORS COVENANT that Trustors lawfully possess and own the Property and have the right to grant and convey the Property and that Trustors will warrant and defend generally the title to the Property against all claims and demands of record.

TO PROTECT THE SECURITY of this Trust Deed, Trustors covenants as follows:

1. Payments. Trustors shall promptly pay principal, interest and all other lawful charges on the indebtedness evidenced by the Note, or by notes evidencing future advances, when due. Beneficiary may apply payments made by Trustors first to expenses incurred by Trustee or Beneficiary for which Trustors are liable under this Trust Deed, then to interest, and then to principal.

2. Condition of Property. Trustors shall keep the Property in good condition and repair; shall use the Property as has been customary; shall not remove or demolish any building on the Property; shall complete or restore promptly and in good and workmanlike manner any building on the Property that may be constructed, damaged, or destroyed; shall comply with all laws, covenants, and restrictions affecting the Property; shall not commit or permit waste of the Property; shall not commit, suffer or permit any act on the Property in violation of law; and shall do all other acts which from the character or use of the Property may be reasonably necessary to preserve the value of the Property.

3. Insurance. Trustors shall provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or erected or placed on the Property after the date of this Trust Deed. Trustors shall carry such insurance in companies approved by Beneficiary with loss payable clauses in favor of Beneficiary, requiring 30 days advance notice of cancellation to Beneficiary and in form acceptable to Beneficiary. In event of loss, Trustors shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is by this Trust Deed authorized and directed to make payment for such loss directly to Beneficiary instead of Trustors and Beneficiary jointly. Beneficiary may, at Beneficiary's sole discretion, apply the insurance proceeds, or any part of the insurance proceeds, to reduce the indebtedness secured by this Trust Deed or to restore or repair the Property.

4. Other Payments. Trustors shall pay all taxes and assessments affecting the Property, including all assessments on water company stock and all rents, assessments, and charges for water, appurtenant to or used in connection with the Property, at least thirty (30) days before delinquency. Trustors shall pay all taxes, encumbrances, charges, and liens, with interest, on the Property or any part of the Property, when due. Trustors shall pay all insurance and other costs required to be borne by Trustors in this Trust Deed when due.

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5. **Evidence of Title.** Trustors shall deliver to, pay for and maintain with Beneficiary until the indebtedness secured by this Trust Deed is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

6. **Defense of Title.** Trustors shall appear in and defend any action or proceeding purporting to affect the security of this Trust Deed, the title to the Property, or the rights or powers of Beneficiary or Trustee. Should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, Trustors shall pay all costs and expenses, including cost of evidence of title and attorney's fees incurred by Beneficiary or Trustee.

7. **Reimbursement.** Trustors shall pay immediately and without demand all sums, including attorney's fees, expended under this Trust Deed by Beneficiary or Trustee, any costs, expenses, or costs of collection or enforcement under this Trust Deed, with interest from date of expenditure until paid at the rate borne by the principal balance of the Note.

8. **Due on Sale.** Trustors shall not make any voluntary inter-vivos transfer or encumbrance of the Property, Trustor's estate in the Property, or any part of the Property without first obtaining the written consent of Beneficiary. Trustors shall not suffer the imposition of any lien, charging order or other encumbrance on the Property or any part of the Property.

9. **Indemnity.** Trustors shall indemnify, defend, and hold Beneficiary and Trustee harmless against any loss, cost, claim or damage, including attorney's fees, incurred by either related to this Trust Deed. Trustors shall promptly reimburse Trustee and Beneficiary for any such indemnifiable expense, and shall provide a defense by independent counsel to Trustee in any suit brought against Trustee or Beneficiary, or in contemplation of the same, which amounts shall be due from Trustors under the provisions of Paragraph 7 hereof.

10. **Inspection.** Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Trustors notice prior to such inspection specifying reasonable cause for the inspection related to Beneficiary interest in the Property.

11. **Proceeds.** Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary will be entitled to all compensation, awards and other payments or relief therefore, and will be entitled, at Beneficiary's sole discretion, to commence, appear in and prosecute in Beneficiary's own name any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action, and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured by this Trust Deed. Trustors agree to execute such

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further assignments of any compensation, awards, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

12. Joinder in Action. At any time and from time to time upon written request of Beneficiary, without affecting the liability of any persons for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the line of charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustors agree to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

13. Assignment of Rents. As additional security, Trustor, by this Trust Deed, assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until notice of default shall be given hereunder, Trustors shall have the right to collect all rents, issues, royalties, and profits earned prior to default as they become due. Trustor's right to collect any of such money shall cease upon filing notice of default and Beneficiary may collect all rents, issues and profits, with or without taking possession of the Property. Nothing contained herein, nor the exercise of the right herein granted, is to be construed to be an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of this trust deed to, any such tenancy, lease, or option. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same.

14. Default. Beneficiary may declare a default under this Trust Deed upon the occurrence of any of the following events: (a) any default under the terms of the note executed concurrently herewith, or any note or evidence of any other obligation secured by this trust deed; (b) failure of Trustors to strictly comply with or fulfill any obligation under this trust deed in an exact and timely manner; (c) bankruptcy or assignment for the benefit of creditors by the Trustor; (d) imposition of any lien or encumbrance, whether voluntary or involuntary, upon the property; (e) any transfer or sale, voluntary or involuntary, of the subject property; or (f) any default under any other agreement executed concurrently herewith.

15. Remedies. Upon a default under this Trust Deed, Beneficiary may (a) at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustors hereby consenting to the appointment of Beneficiary as such receiver, and waiving bond and notice of such appointment) and without regard to the adequacy of any security for the indebtedness hereby secured, enter on and take possession of the property or any part thereof and in

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its own name sue or otherwise collect the rents, issues and profits, including those past and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, on any indebtedness secured hereby and in such order as Beneficiary may determine; (b) take or any action reasonably necessary to protect the security hereof, including but not limited to entering on the property for such purpose; commencing, appearing in, and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; paying, purchasing, contesting or compromising any encumbrance, charge or lien, which appears to be superior hereto; and, in exercising any such powers, to incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including costs of evidence of title, employ counsel and pay his reasonable fees; (c) declare all sums secured hereby immediately due and payable and foreclose this trust deed in the manner provided by law for the foreclosure of trust deeds, including exercising a power of sale over the Property, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court. These remedies are cumulative and exercise of one or several shall not prevent pursuit of any other remedy or remedies herein provided or provided by law.

16. Trustee. The duties and obligations of the Trustee will be determined solely by the express provisions of this Trust Deed and the Trustee will not be liable except for the performance of such duties and obligations as are specifically set forth in the same, and no implied covenants or obligations may be read against the Trustee. The Trustee may execute and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of any of the same who have been selected by it in accordance with the standard hereafter specified, and shall be entitled to advice of counsel concerning all matters hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed which shall be paid by Beneficiary and which shall be due from Trustors under the provisions of Paragraph 7 hereof. The Trustee may act upon the opinion or advice of any attorney. The Trustee will not be responsible for any loss or damage resulting from any action or non-action taken or omitted to be taken in good faith in reliance upon such opinion or advice. The Trustee will not be liable for any error of judgment made in good faith by any of its officers or employees unless it shall be proved that the Trustee failed to ascertain pertinent facts to the standard hereafter set forth. Any action taken by the Trustee pursuant to this Trust Deed upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is a Beneficiary, is conclusive and binding upon all Beneficiaries. The permissive right of the Trustee to do things enumerated in the Trust Deed shall not be construed as a duty and it shall not be answerable for other than its gross negligence or willful default. The Trustee shall be under no obligation to exercise any of the powers

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vested in it by this Trust Deed at the request, order or direction of the Beneficiary, pursuant to the provisions of this Trust Deed, unless all Beneficiaries shall have offered to the Trustee adequate security against the costs, expenses and liabilities which might be incurred therein or thereby. Trustee may decline to act if Trustee reasonably believes any action directed to be taken is in violation of law.

17. Successor Trustee. Beneficiary may appoint a successor Trustee at any time by filing for record in the office of the county recorder of each county in which the property or some part thereof is located, a substitution of Trustee. From the time a substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee named herein and of any successor Trustee. Each substitution shall be executed and acknowledged and notice thereof shall be given and proof and notice thereof shall be given in the manner provided by law.

## GENERAL PROVISIONS

18. Interpretation Construction. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, personal representatives, successors and assigns. Acceptance of any interest in the property by any party shall signify personal assumption of the obligations herein recited. All obligations of Trustors hereunder are joint and several. The term Beneficiary shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural. Headings of paragraphs have no substantive significance and are for convenience in reference only.

19. No Waiver by Act. The entering on and taking possession of the property, the collection of rents, issues and profits or the proceeds of fire and other insurance policies or compensations or awards for the taking or damage of the property, and the application or release thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

20. No Waiver by Failure to Act. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the written waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

21. Law. This trust deed shall be governed and construed according to the laws of the State of Utah.

22. Final Document. All negotiations, preliminary agreements, and representations are merged herein. This document is intended as the final and exclusive statement of the agreement of the parties. Amendment, modification or waiver of any term hereof may be made only in writing, subscribed by all the parties hereto.

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23. Request for Notice. The undersigned Trustors request that a copy of any notice of default and of any notice of sale be mailed to him at the following address:

1790 S. River Road, St. George, Utah 84790

DATED April 25, 2019

TRUSTOR:

Howard D. Cottam

Howard D. Cottam

Valorie W. Cottam

Valorie W. Cottam

STATE OF UTAH )

COUNTY OF WASHINGTON )

On this 25 day of April, 2019, before me a notary public, personally appeared Howard D. Cottam and Valorie W. Cottam, proved on the basis of satisfactory evidence to be the person(s) whose names are subscribed to this instrument, and acknowledged executing the same.

Witness my hand and official seal.



Tere Shake  
NOTARY PUBLIC

Initials: HC, VWC

**LEGAL DESCRIPTION  
EXHIBIT A**

**PARCEL 1:**

BEGINNING AT A POINT NORTH 01°00'47" EAST 1,310.58 FEET ALONG THE SECTION LINE AND NORTH 88°59'13" WEST 1,712.22 FEET FROM THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 64°59'13" WEST 104.72 FEET; THENCE SOUTH 42°16'32" WEST 111.64 FEET; THENCE SOUTH 47°43'27" EAST 100.00 FEET; THENCE NORTH 42°16'32" EAST 142.72 FEET TO THE POINT OF BEGINNING.

**PARCEL 1A:**

A 20.00 FOOT ROAD RIGHT-OF-WAY, AS CREATED BY INSTRUMENT RECORDED APRIL 16, 1987, AS ENTRY NO. 00313573, IN BOOK 449, AT PAGE(S) 25, OFFICIAL WASHINGTON COUNTY RECORDS, AND SURVEYED DECEMBER 08, 2010, BY MCNEIL ENGINEERING, OF WHICH THE SURVEYED MEASUREMENTS OF THE CENTERLINE ARE DESCRIBED AS FOLLOWS:

BEGINNING NORTH 01°00'47" EAST 1,417.45 FEET ALONG THE SECTION LINE AND NORTH 88°59'13" WEST 1,927.67 FEET FROM THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 64°59'13" EAST 241.59 FEET; THENCE SOUTH 50°10'13" EAST 203.73 FEET; THENCE SOUTH 75°29'13" EAST 60.00 FEET; THENCE NORTH 88°58'11" EAST 126.20 FEET MORE OR LESS TO THE WESTERLY RIGHT-OF-WAY LINE OF RIVER ROAD.

**PARCEL 2:**

BEGINNING AT A POINT NORTH 1104.04 FEET ALONG THE SECTION LINE AND WEST 1820.32 FEET FROM THE EAST ¼ CORNER OF SECTION 5 TOWNSHIP 43 SOUTH, RANGE 15 WEST; THENCE N31° W 301.73 FEET; THENCE N41°15'45 E 62.4 FEET; THENCE S66° E 138.68 FEET; THENCE S41°15'45 W 104.46 FEET; THENCE S48°44'15 E 100 FEET; THENCE N41°15'45 E 135.53 FEET; THENCE S51°11'E 55 FEET; THENCE S41°15'45 W 228.9 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THE FOLLOWING:

BEGINNING AT A POINT NORTH 01°00'47" EAST 1,310.58 FEET ALONG THE SECTION LINE AND NORTH 88°59'13" WEST 1,712.22 FEET FROM THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 64°59'13" WEST 104.72 FEET; THENCE SOUTH 42°16'32" WEST 111.64 FEET; THENCE SOUTH 47°43'27" EAST 100.00 FEET; THENCE NORTH 42°16'32" EAST 142.72 FEET TO THE POINT OF BEGINNING.

**PARCEL 3:**

A RIGHT OF WAY DESCRIBED IN QUIT CLAIM DEED RECORDED SEPTEMBER 18, 1998 AS ENTRY NO. 617891 IN BOOK 1258 AT PAGE 394 OF OFFICIAL RECORDS AND BEING DESCRIBED AS FOLLOWS:

TOGETHER WITH A 20.00 FOOT RIGHT OF WAY THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 1417.45 FEET ALONG THE SECTION LINE AND WEST 1927.67 FEET FROM THE EAST ¼ CORNER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 66°00' EAST 241.59 FEET; THENCE SOUTH 51°11' EAST 203.73 FEET; THENCE SOUTH 76°30' EAST 60.00 FEET; THENCE NORTH 88°00' EAST 160.00 FEET, MORE OR LESS, TO THE CENTER OF AN EXISTING ROADWAY.