

DOC # 20080026189

Agreement Page 1 of 6
Russell Shirts Washington County Recorder
06/27/2008 10:41:26 AM Fee \$ 22.00
By SOUTHERN UTAH TITLE CO



When recorded return to:

Troy Blanchard, Esq.
Durham Jones & Pinegar
192 E 200 N 3rd Flr
St George UT 84770

SEPTIC PERMIT AGREEMENT

This Septic Permit Agreement (“Agreement”) is made and entered into by and between Monty Clayne Bundy (“Bundy”), and Richard and Julia Costello (“Costello”), (“Costello,” together with Bundy referred to herein collectively as the “Parties” and each individually as a “Party”).

RECITALS

A. Costello is the owner of the following described real property that is located in Diamond Valley Acres subdivision, Washington County, State of Utah (the “Costello Lots”):

Tax ID: DVA-2-A-153-A-SW

All of Lots 152 and 153, Diamond Valley Acres, Phase 2, Plat A, 2nd Amended

B. Prior to 2000 Washington County authorized a permit for a septic system (“Septic Permit”) for each of the Costello Lots.

C. Costello built a home that occupies portions of each of the Costello Lots, which resulted in Costello using only one of the authorized Septic Permits.

D. Costello has no future use for the unused Septic Permit and desires to sell, transfer, and assign any rights to the Septic Permit to Bundy.

E. Bundy is the owner of the following described real property that is located in

Washington County, State of Utah (the "Bundy Property");

Tax ID: 7240-C-SW

Beginning at the Southeast Corner of Lot Thirteen (13), DIAMOND RIDGE ESTATES PHASE 1, SECOND AMENDED, as recorded and on file at Washington County Records Office; and running thence North 0°28'16" East along the East Boundary 330.39 feet to the South Right-of-way Line of Amethyst Drive; thence North 88°30'00" East 79.58 feet to a point on a 825.00 foot curve to the left; thence along arc of said curve 79.67 feet through a central angle of 5°32'00" to a point on a 825.00 foot reverse curve to the right; thence along said arc of said curve 17.50 feet through a central angle of 1°12'54"; thence South 0°23'28" West 215.36 feet; thence South 89°31'44" East 350.00 feet; thence North 0°23'28" East 316.07 feet to a point on a 290.00 foot radius curve to the right with a radius point which bears North 44°40'06" West, said point also being on the Southeasterly Right-of-Way of Amethyst Drive; thence along the arc of said curve 178.37 feet through a central angle of 35°14'24"; thence North 10°05'30" East 46.52 feet to a point on a 275.00 foot radius curve to the left with a radius which bears North 79°54'30" West; thence along the arc of said curve 48.44 feet through a central angle of 10°05'30"; thence North 0°00'00" East 196.24 feet; thence leaving said Subdivision Boundary South 74°10'00" East 316.70 feet; thence South 0°22'45" West 805.04 feet; thence North 89°31'44" West 923.20 feet to the point of beginning.

F. Bundy desires to install a septic system to service the Bundy Property or a portion thereof and needs a Septic Permit for this purpose.

G. Bundy desires to purchase any and all rights Costello has in the unused Septic Permit and to transfer use of the Septic Permit from the Costello Lots to the Bundy Property.

NOW, THEREFORE, in consideration of the covenants and undertakings expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the representations stated above, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated by this reference and made a part of this Agreement.

2. Purchase and Sale. Subject to the terms and timely performance of the conditions herein set forth, Costello agrees to sell, assign and transfer to Bundy, and Bundy desires to purchase from Costello, all of Costello's rights in the Septic Permit.

3. Purchase Price. In exchange for Costello's successful assignment of the Septic Permit to Bundy, Bundy shall pay to Costello the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Purchase Price").

4. Closing of Transaction. The closing on the purchase and sale of the Septic Permit ("Closing") will occur upon Washington County's issuance of the Septic Permit to Bundy for use on the Bundy Property, at which time Bundy shall deliver the Purchase price to Costello. The Closing shall occur on or before July 31, 2008. In the event Closing does not occur before July 31, 2008, then this Agreement and all obligations of the Parties herein shall be cancelled, provided that the parties shall cooperate in good faith and take such action as may be required by Washington County to cause the Septic Permit to be issued to Bundy, including, if necessary, recording a covenant that another septic tank may not be installed on the Costello Lots.

5. Costello's Representations and Warranties. Costello hereby makes the following representations and warranties pertaining to the Septic Permit, which representations and warranties shall be applicable, true and correct as of the date of Closing.

5.1 Costello will assign any interest they have in the Septic Permit to Bundy free and clear of all liens, claims, security interests, encumbrances or adverse interests of any kind whatsoever, subject to any exceptions that may be approved by Bundy. This warranty shall survive the delivery of the Septic Permit from Costello to Bundy and shall not be merged as a result of the Closing of the transaction and delivery of the Septic Permit contemplated by this Agreement.

5.2 Costello has not received any notice nor is otherwise aware of any claims, actions, suits or other proceedings either pending, threatened or, to the best of its knowledge, contemplated by any governmental agency, entity or person that might constitute a claim against the Septic Permit or interfere with the transaction contemplated by this Agreement.

5.3 Costello has the full capacity, right, power and authority to enter into this Agreement and to enter into the transaction contemplated by this Agreement.

5.4 This Agreement constitutes a valid and legally binding obligation of Costello, enforceable in accordance with its terms.

5.5 Costello is not in default in any respect of any judgment, order, writ, injunction, decision, law, ordinance or regulation of any court or governmental authority to which the Septic Permit or any portion thereof are, or might be subject, which might prohibit, delay, or interfere with the consummation of this transaction.

6. Bundy's Representations and Warranties. Bundy hereby makes the following representations and warranties and agrees that such representations and warranties shall be applicable, true and correct as of the Closing Date.

6.1 Bundy has the full capacity, right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein.

6.2 This Agreement constitutes a valid and legally binding obligation of

Bundy, enforceable in accordance with its terms.

7. Notice. All notices and communications to be given under this Agreement shall be given in writing and shall be deemed given upon confirmation of successful facsimile transmission or when deposited in the mail, addressed to the Party entitled to receive notice with registered or certified postage prepaid, as follows:

Richard and Julia Costello
1270 W Topaz ~~MB~~ *MB* *mg*
Saint George, UT 84770

Monty Clayne Bundy
7975 Diamond Valley Ct.
Saint George, UT 84770

A Party may change the address to which notices and communications are to be sent under this paragraph by giving the notice required by this paragraph.

8. Entire Agreement. All negotiations, understandings, representations and preliminary agreements are merged herein. The Parties intend this Agreement to be the final and exclusive expression of their agreement.

9. Modification. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

10. Governing Law. This Agreement shall be governed, enforced and construed under the laws of Utah. The Parties agree that any legal action or proceeding against arising out of or relating to this Agreement shall be brought in the United States District court for the District of Utah or in the Utah state court sitting in Washington County, Utah and each Party submits to the exclusive jurisdiction of such courts.

11. Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the provisions of this Agreement, the prevailing party in such action (as determined by the Court) shall be entitled to recover from the other party its reasonable attorney's fees, costs, and disbursements in addition to any other relief to which such party may be entitled.

12. Severability. With respect to this Agreement and all agreements, documents, obligations, and transactions contemplated by this Agreement, any provision hereof or thereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective, and only to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof or thereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any provision in any other jurisdiction.

13. Construction. All references in this Agreement to the singular shall be deemed to include the plural if the context requires, and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context clearly requires a different interpretation.

14. Survival. All agreements, representations, warranties, and covenants made herein shall be true upon execution of this Agreement and shall be deemed to be repeated at and as of the Closing Date and shall survive the execution and delivery of the documents provided for in this Agreement.

15. Successors and Assigns. All of the terms, provisions, agreements, representations, warranties, and covenants in this Agreement shall bind the Party making the same, and their respective heirs, personal representatives, successors, and assigns.

16. Authorization. Each individual executing this Agreement does thereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

17. Execution of Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. A facsimile transmission of an original signature may constitute such counterpart.

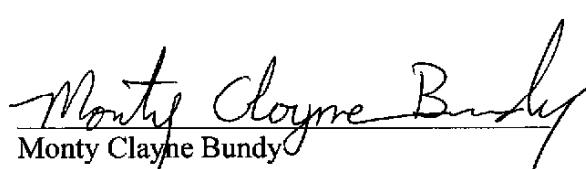
18. Time of the Essence. Time is of the essence in performance of any obligation under this Agreement.

IN WITNESS WHEREOF, each Party to this Agreement has caused it to be executed on the date indicated below.


Richard Costello


Julia Costello

Dated: 3/4/08

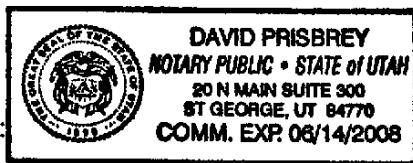

Monty Clayne Bundy

Dated: 3/4/08

STATE OF UTAH)
:ss
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 4th day of ^{March} January, 2008,
by Richard and Julia Costello, *and Richard Costello, Jr.*

SEAL:

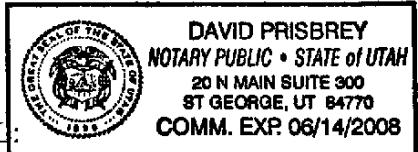


David Prisbrey
Notary Public

STATE OF UTAH)
:ss
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 4th day of ^{March} January, 2008,
by Monty Clayne Bundy.

SEAL:



David Prisbrey
Notary Public

41903.00