

When Recorded Return To:  
Virgin Town  
114 Mill St, Virgin  
UT 84779

Affects Parcel No. \_\_\_\_\_

## **IMPROVEMENT DEFERRAL AGREEMENT**

THIS IMPROVEMENT DEFERRAL AGREEMENT (“Deferral Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by and between the VIRGIN TOWN, a Utah municipal corporation, (“Town”) and \_\_\_\_\_, and their successors and assigns (collectively “Applicant”). Throughout this Agreement, the Town and Applicant may be individually referred to as “Party” and collectively as “Parties”.

### **RECITALS**

A. WHEREAS, Applicant is the owner of the following parcel of real property located within the municipal boundaries of the Town more particularly described in *Exhibit “A”*, which is attached hereto and incorporated herein by this reference (“Subject Property”).

B. WHEREAS, Applicant has applied for a building permit to construct a single-family residence upon the Subject Property (“Residence”).

C. WHEREAS, Pursuant to Title 16, Chapter 8, Section 34 of the Virgin Town Code (“Town Code”), applicants seeking the approval of a building permit (and ultimately a certificate of occupancy) from the Town must install curb, gutter and sidewalks of a type approved by the Virgin Town Council (the “Town Council”) on any existing or proposed street adjoining a lot on which the main building is to be constructed or added onto, or on which a new use is to be established (“Improvements”).

D. WHEREAS, the Applicant has applied for a deferral of its obligations to install the Improvements utilizing a recorded Deferral Agreement and the Town Council has found that unusual circumstances exist in that the street which adjoins the Subject Property, is not built out sufficiently to determine the proper locations, elevations and dimensions of the Improvements and that their installation would not serve their intended purpose as they would not continue and extend to existing Town infrastructure so as to provide safe and continuous vehicular travel surfaces, pedestrian travel surfaces as well as proper drainage, detention and dispersement of storm and surface water in the area.

E. WHEREAS, as a result of the Town’s findings of unusual circumstances, the Town is willing to allow the Applicant to obtain a building permit, construct the Residence and obtain a Certificate of Occupancy (assuming all building codes and regulations have been complied with) as long as the Applicant executes this Deferral Agreement and authorizes it to be recorded against the Subject Property so as to create a contractual obligation between the Applicant and the Town whereby the Town will be authorized, at any point in time it deems necessary and reasonable, to

have the Improvements installed, it may do so and require the Applicant or successor owners of the Subject Property to pay for the same (or their proportional share if part of a larger project) within 30 days of completion of the Improvements.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Building Permit. Upon: a) the Applicant's notarized execution of this Deferral Agreement and delivery of the same to the Town with authorization to record it in the Official Records of Washington County, State of Utah, such that it is a covenant that runs with the Subject Property, and b) submittal of building and site plans that are in compliance with Title 16 of the Town Code, the Town agrees to issue Applicant a building permit for the Residence, upon the condition that Applicant fulfills all other requirements necessary to obtain a building permit under the laws and ordinances of the Town, including without limitation the payment of any application fees and impact fees.
  2. Certificate of Occupancy. So long as Applicant has obtained a building permit, paid all necessary fees and costs, and has constructed the Residence in compliance with all applicable building and safety codes (as evidenced by passage of all necessary inspections), the Town will issue a Certificate of Occupancy for the Residence.
  3. Payment of All Costs to Install Improvements In The Future. If, and when, the Town, in its sole discretion, determines it is necessary and proper to have the Improvements installed (regardless of whether it is installed exclusively adjacent to the Subject Property or as part of a larger improvement project), the Town shall give the Applicant or the current owner of the Subject Property notice of the Town's intent. Once the installation of the Improvements are complete, the Town shall provide Applicant or the current owner of the Subject Property a second notice containing information regarding the completion of the Improvements and the cost of said Improvements (or the proportional share of the cost allocable to the Improvements if they were installed as part of a larger improvement project) ("Payment Notice"). Thereafter, Applicant, or the current owner of the Subject Property expressly covenants and agrees to reimburse the Town in full for the amount set forth in the Payment Notice within 30 days after delivery of the Payment Notice.
  4. Special Assessment Area ("SAA") Waiver. If the Town: a) determines it is appropriate to create a Special Assessment Area ("SAA") which includes the Subject Property to fund the installation of the Improvements, or b) determines to install the Improvements as part of an Town sponsored improvement project, the Applicant, and its successors and assigns, agree to affirmatively support, participate in, and cooperate with the formation of the SAA and will not object thereto.
  5. Additional Terms. The following additional condition(s) must be complied with by Applicant as condition(s) and term(s) of this Agreement:
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6. Default. If the Applicant, or its successors or assigns, fails to perform or comply with any obligation under this Agreement, including without limitation the timely payment of Improvement costs, such failure shall constitute a default. Upon default, the Town may still cause the Improvements to be installed along the Property's frontage and shall be entitled to recover from the Applicant all costs and expenses incurred in connection therewith. All amounts owed shall accrue interest at the rate of Ten Percent (10%) on the total amount due from the date of completion of the Improvements, until paid in full.

7. Notices. All notices or communications to be given under this Agreement shall be given in writing and shall be deemed given when deposited in the mail to the last known address of the Party entitled to receive notice, postage prepaid, registered or certified.

8. Binding Effect. This Agreement shall be recorded in the Official Records in the Office of the Recorder of Washington County, State of Utah at the Applicant's expense and shall constitute notice to all successors in interest in the Subject Property and shall act as a lien upon the Subject Property until the above-described Improvement Costs, including interest, is paid in full. The Agreement shall run with the land and shall bind and inure to the successors and assigns of the parties.

9. Attorney's Fees and Enforcement Costs. Applicant agrees to pay the Town all of its costs of enforcement of this Agreement, including reasonable attorney's fees and costs whether or not legal action is instituted.

10. Integration and Modification. All negotiations, understanding, representations, and preliminary agreements are hereby merged and integrated into this Agreement which shall be the final expression of the Parties understanding. This Agreement may not be modified, amended or revoked unless by a writing signed by all the Parties hereto, and/or their successors and/or assigns.

11. Governing Law/Venue. This Agreement shall be governed, interpreted, and construed by the laws of the State of Utah. In the event of default or material dispute the Parties acknowledge and agree that jurisdiction and venue shall be proper solely within the 5<sup>th</sup> District Court, in and for Washington County, State of Utah.

12. Survival. It is expressly agreed that the terms, covenants and conditions of this agreement shall survive any legal act or conveyance required under this Agreement. All of the terms and conditions of this Agreement are expressly intended to be construed as covenants as well as conditions.

*(Signature Pages to Follow)*

**APPLICANT:**

On this \_\_\_\_ day of \_\_\_\_\_, 2023, \_\_\_\_\_ (applicant), being first duly sworn, deposes and says that he has read the foregoing Deferral Agreement and knows the contents thereof and that he signed the said document for its intended purpose.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, \_\_\_\_\_(applicant), being first duly sworn, deposes and says that she has read the foregoing Deferral Agreement and knows the contents thereof and that she signed the said document for its intended purpose.

NOTARY PUBLIC



**EXHIBIT “A”**  
**TO IMPROVEMENT DEFERRAL AGREEMENT**  
**(Legal Description of Subject Property)**