

**VIRGIN TOWN, UTAH
ORDINANCE 2024.XX
AN ORDINANCE AMENDING AND RESTATING IN ITS ENTIRETY, CHAPTER 18 (DIVISION
OF LAND) OF THE VIRGIN UNIFORM LAND USE CODE ESTABLISHING REGULATIONS
RELATED TO THE SUBDIVISION OF REAL PROPERTY WITHIN THE MUNICIPAL
BOUNDARIES OF VIRGIN TOWN, STATE OF UTAH.**

RECITALS

WHEREAS pursuant to Utah Code Ann. § 10-1-201 Virgin Town (“the Town”) is a Utah municipal corporations and political subdivision of the State of Utah.

WHEREAS pursuant to Utah Code Ann. § 10-3b-401 the Town Council (“the Town Council”) is the legislative and governing body of the Town.

WHEREAS pursuant to Utah Code Ann. § 10-9a-103(31), the Town Council, in addition to being the legislative and governing body of the Town, is also the Land Use Authority vested with the power to enact all land use regulations and make all land use decisions within the Town unless the latter administrative power is delegated to another body or person;

WHEREAS pursuant to Utah Code Ann. § 10-9a-601 *et seq*, the Town Council is admonished to enact a cohesive series of ordinances which regulate the subdivision or joinder of real property including the requirement of plats which must be first approved preliminarily and then approved finally and recorded in the Official Records of Washington County, State of Utah.

WHEREAS the Town has, in fact, adopted such a series of ordinances regulating the subdivision and joinder of parent parcels of real property - said ordinances are codified in Chapter 18 (Division of Land) of Title 14 (Land Use and Development) of the Virgin Municipal Code

WHEREAS in 2023 the Utah State Legislature adopted SB174 which required all municipalities to make vast and sweeping changes to their subdivision ordinances in order to comply with the mandates of SB174.

WHEREAS the Town Planner, working in conjunction with the Town Attorney, has drafted an amended and completely restated version of Chapter 18 of the Virgin Uniform Land Use Code such that its provisions comply with SB174.

ORDINANCE

NOW THEREFORE, be it hereby ordained and decreed by the Town Council, as follows:

SECTION 1: AMENDMENT AND RESTATEMENT OF CHAPTER 18 OF TITLE 14 OF THE VIRGIN MUNICIPAL CODE. CODE. Chapter 18 (“Division of Land”) of Title 14 (Land Use and Development) of the Virgin Municipal Code is hereby amended and restated in its entirety as follows:

CHAPTER 18 DIVISION OF LAND

18.02 GENERAL PROVISIONS

18.04 DEFINITIONS (See VULU Chapter 2)

18.06 BOUNDARY LINE ADJUSTMENT/SUBDIVISION WAIVERS

18.08 PRE-APPLICATION PROCESS

18.10 PRELIMINARY PLAT

18.12 FINAL PLAT

18.14 REQUIREMENTS FOR DESIGN AND IMPROVEMENTS

18.16 OWNERSHIP AND MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES

18.18 FINANCIAL RESPONSIBILITY FOR ALL SUBDIVISIONS

18.02 GENERAL PROVISIONS:

- A. *TITLE: These regulations contained within this Chapter shall officially be known, cited, and referred to as the Virgin Town Subdivision Ordinance.*
- B. *STATUTORY AUTHORIZATION: This ordinance is adopted pursuant to the authority granted by Title 10, Chapter 9a of the Utah Code.*
- C. *JURISDICTION: Jurisdiction of this ordinance shall include all lands within the municipal boundaries of the Town.*
- D. *PURPOSES: The purpose of this ordinance is to accomplish the following:*
 - 1. *To adopt subdivision regulations for the divisions of land within the Town.*
 - 2. *To guide the future growth and development of the community consistent with the Virgin Land Use and Development Code (“VULU”) contained within the Town Code.*
 - 3. *To encourage preservation of open space, scenic views, sensitive natural resources, significant archaeological sites, and historic buildings.*
 - 4. *To provide for a diversity of lot sizes, housing choices, and building densities.*
 - 5. *To provide buffering between new development and existing uses.*
 - 6. *To preserve natural drainage systems and ensure adequate present and future rain and flood water drainage.*
 - 7. *To protect the purity of waterways and watersheds, and*
 - 8. *To promote the development of a connective trail systems throughout the Town and the region.*
- E. *WATER AVAILABILITY: Municipal water availability must be established prior to the creation of any new buildable lot.*
- F. *APPLICABILITY AND COMPLIANCE: Subdivision standards set forth in this chapter do not necessarily apply to partitions, joinders, adjustments and divisions that do not qualify as subdivisions under Utah Code and the Virgin Uniform Land Use ordinance (VULU).*
 - 1. *The standards of this ordinance apply to all subdivisions. All subdivisions shall be consistent with all applicable zoning ordinances for the parent parcel.*

2. *The overall development density for the parent parcel is the same as would be allowed in the existing zone except for those conservation subdivisions which qualify for a development bonus under VULU Chapter 18.14B.*
3. *It shall be unlawful for any person to offer to sell or lease, to contract to sell or lease, or to sell or lease any such division of land, or any part thereof, which is located in the Town, until the provisions of this ordinance, as they apply to the property in question, have been met.*
4. *No person shall divide any land under the provisions of this ordinance without compliance with all requirements of this ordinance and all applicable local, county, state, and federal regulations.*

G. ABROGATION AND GREATER RESTRICTIONS:

1. *PUBLIC PROVISIONS: These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. If there is any conflict in content or interpretation, the Provision which imposes higher standards shall control.*
2. *PRIVATE PROVISIONS: These regulations are not intended to abrogate any easement, covenant, or any other private agreement or restriction, provided that, where the provisions of these regulations are more restrictive than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement impose duties and obligations more restrictive than these regulations, and the private provisions are not inconsistent with these regulations, then the private provisions shall be operative and supplemental to these regulations and the determinations made under the regulations.*

H. ENFORCEMENT, VIOLATION, PENALTIES:

1. *VIOLATION. It shall be unlawful to build or develop upon, divide, convey, record, or monument any land in violation of this Chapter or state law, and no person shall be issued a building permit until the requirements of this Chapter have been fully met.*
2. *PENALTIES. Both civil and criminal penalties for violation of this Chapter shall be imposed and prosecuted in compliance with Section 2.26 of VULU.*

I. APPEALS: (See VULU Chapter 6).

- J. *FEES: The Town Council may, by resolution, establish reasonable fees for the administration of this ordinance. Furthermore, applicants for approval of any application under this Chapter shall reimburse the Town for all professional advisors consulted by the Town in consideration of the project, including engineers, attorneys, planners, and other experts.*

18.04 DEFINITIONS:

A. *The following definitions are utilized in this Chapter (Division of Land) and shall be restated in Chapter 2 (Definitions) of this Title:*

1. *“Administrative Land Use Authority” means:*

- 1) *An individual, board, committee, or commission appointed or employed by the Town, including members of the Town staff and the Virgin Planning & Zoning Commission.*
- 2) *“Administrative Land Use Authority” does not include the Town Council or a member of the Town Council.*

2. *“Parcel” means any real property that is not a lot.*

3. *“Review Cycle” means the occurrence of:*

- 1) *The applicant’s submittal of a complete subdivision land use application as described in sections 18.10A(4) and 18.12A(3);*
- 2) *The Town’s review of a preliminary plat application or final plat application;*
- 3) *The Town’s response to said applications, in accordance with this Chapter; and*
- 4) *The applicant’s reply to the Town’s response that addresses each of the Town’s required modifications or requests for additional information.*

4. *“Subdivision”*

1) *The term “Subdivision” includes:*

- 1) *The division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and*
- 2) *Except as provided in Utah State Code 10-9a-102, Section (68)(c) divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.*

2) *“Subdivision” does not include:*

- 1) *a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance,*
- 2) *A boundary line agreement recorded with the county recorder’s office between owners of adjoining parcels adjusting the mutual*

boundary in accordance with Utah State Code Section 10-9a-524 if no new parcel is created,

- 3) A recorded document, executed by the owner of record which revises the legal descriptions of multiple parcels into one parcel,*
 - 4) A boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 10-9a-524 and 10-9a-608 if:*
 - A) No new dwelling lot or housing unit will result from the adjustment; and*
 - B) The adjustment will not violate any applicable land use ordinance;*
 - 5) A bona fide division of land by deed or other instrument if the deed or other instrument states in writing that the division:*
 - 1. Is in anticipation of future land use approvals on the parcel or parcels.*
 - 2. Acknowledges that it does not confer any land use approvals; and*
 - 3. Has a division of land waiver statement issued by the Town Attorney attached to the deed or instrument of conveyance.*
 - 6) A parcel boundary adjustment, as such term is used in Utah Code Ann. § 10-9a-103,*
 - 7) A lot line adjustment, as such term is used in Utah Code Ann. § 10-9a-103;*
 - 8) A road, street, or highway dedication plat, or*
 - 9) A deed or easement for a road, street, or highway purpose.*
- 5. “Subdivision Improvement Plans” means the civil engineering plans associated with required infrastructure and utilities required for a subdivision.*
 - 6. “Subdivision Submittal Checklists” means that checklist of requirements for submission of a preliminary plat application, subdivision improvement plans, or a final plat application that is published and maintained by the Town.*
 - 7. “Water Conveyance Facility” means a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse. A water conveyance facility does not mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for culinary or industrial water, or any federal water project facility.*

18.06 BOUNDARY LINE ADJUSTMENT/DIVISION OF LAND WAIVERS:

A. BOUNDARY LINE ADJUSTMENT

1. BOUNDARY LINE ADJUSTMENT APPLICATION PROCESS:

- a. Any adjustment to a boundary between two parcels or lots which does not qualify as a subdivision shall be reviewed and approved by the Virgin Planning & Zoning Commission, who shall act as the Administrative Land Use Authority for said applications.*
- b. Applicant owner(s) desiring a boundary line adjustment shall submit a boundary line adjustment application, which shall include no less than:*
 - 1) A boundary line adjustment application form issued by the Town completed and signed by the owner(s) of the parcels or lots that are the subject of the proposed boundary line adjustment or an authorized agent of the owner, as designated in an owner's affidavit,*
 - 2) An owner's affidavit (if applicable),*
 - 3) A record of survey performed by and prepared by a surveyor licensed and bonded in the State of Utah showing:*
 - A) The parcels or lots involved in the proposed boundary line adjustment including the gross size of each,*
 - B) The Current ownership of each parcel or lot and all contiguous parcels or lots,*
 - C) The legal description and gross acreage of each parcel or lot should the application be granted.*
 - D) Survey coordinates such as section, range, township, and point of beginning,*
 - E) A designation of the zoning district where the parcels and/or lots that are the subject of the boundary line adjustment are located, and*
 - F) Approval signature blocks for the chairman of the Virgin Planning & Zoning Commission, Town Attorney, and Town Engineer, as well as the applicable Washington County officers.*
 - 4) Any agreement between owners to be recorded with the record of survey upon approval.*
 - 5) Documentation of payment of the boundary line adjustment application fee as set forth in the Town's current uniform fee schedule.*

2. BOUNDARY LINE ADJUSTMENT REVIEW & APPROVAL PROCESS:

- a. Upon receipt of a complete boundary adjustment application, the Virgin Planning & Zoning Commission shall review the proposed adjustment for*

compliance with all other applicable provisions of this Title at its next regularly scheduled meeting.

- b. If the Virgin Planning & Zoning Commission finds that the proposed adjustment would result in non-compliance with other provisions of this Title, it may table the application and allow the applicant to resubmit a revised record of survey which does comply with all other provisions of this Title.*
- c. Should the Virgin Planning & Zoning Commission find the proposed adjustment would comply with all provisions of this Title, it shall approve the application and authorize the applicable Town officials to sign the record of survey (subject to any modifications required by the Town Attorney or Town Engineer) and release said record of survey to the applicant owner(s) to be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah, at their pleasure.*
- d. Any boundary line adjustment record of survey approval shall be void if not recorded within one year of approval.*

B. DIVISION OF LAND WAIVERS

1. DIVISION OF LAND WAIVER APPLICATION PROCESS.

- a. An owner or owners of a parcel of land which is not a platted lot, who desires to divide said parcel into to two (2) parcels in anticipation of future development shall apply for a simple division of land waiver. The Town Attorney shall be the Administrative Land Use Authority for all division of land waiver applications.*
- b. Applicants desiring a division of land waiver shall submit a division of land waiver application, which shall include no less than:*
 - 1) A division of land waiver application form approved by the Town signed by the owner(s) of the parent parcel, or an authorized agent of the owner(s), as designated in an owner's affidavit.*
 - 2) An owner's affidavit (if applicable),*
 - 3) An aerial map or scaled depiction showing the parent parcel to be divided in relation to existing cross streets or access roads, as well as the line of division and the size (expressed in acreage) of the two parcels that will be the result of the division.*
 - 4) A draft of the proposed deed or instrument of conveyance that would create the division with the metes and bounds legal description of both resulting parcels.*
 - 5) Current ownership and zoning district designation of the parent parcel*
 - 6) A draft of restrictive covenant or easement (if not expressed in the proposed deed) that will be recorded in connection with the proposed deed).*

- 7) *Documentation that the division of land waiver application fee as set forth in the Town's current uniform fee schedule has been paid.*

2. DIVISION OF LAND WAIVER REVIEW AND APPROVAL PROCESS.

- a. *Upon the Town's receipt of a complete division of land waiver application, it will be forwarded to the Town Attorney who shall review the same for compliance with all application sections of this Title.*
- b. *Should the Town Attorney find compliance with the applicable sections of this Title, the Town Attorney will approve the division of land waiver application by executing a division of land waiver acknowledgment signed by the Town Attorney indicating that the Town has reviewed and approved the proposed deed or instrument of conveyance and acknowledges the resulting effect of the deed but further clarifies that division of land waiver acknowledgment does not create any vested rights or land use approval for any sort of future development on the resulting parcels.*
- c. *Upon the execution of the division of land waiver, the Town Attorney shall provide the applicant with an original of the same that must be attached to the deed or instrument of conveyance when submitted for recording in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.*

18.08 SUBDIVISION PRE-APPLICATION PROCESS:

A. SUBDIVISION PRE-APPLICATION PROCESS:

1. *All proposed subdivisions shall meet the application and review requirements outlined in Utah State Code 10-9a-601, et seq, as amended, this chapter, and the requirements for the respective zone in which the subdivision is proposed.*
2. *An applicant for a subdivision may request a pre-application meeting with staff. With regard to a pre-application meeting, the following shall apply:*
 - a. *The applicant shall submit a concept plan for Virgin Staff review.*
 - b. *The Town shall, within fifteen (15) business days after a concept plan and request for a pre-application meeting, schedule the meeting to review the concept plan and give initial feedback.*
 - c. *At the pre-application meeting, the Town shall provide or have made available on the Town's website the following:*
 - i. *All applicable land use regulations of the Town,*
 - ii. *All applicable standards and specifications for public improvements promulgated by the Town,*
 - iii. *A copy of the Town's current preliminary plat application checklist,*

- iv. *A copy of the Town's current subdivision improvement plan checklist,*
 - v. *A copy of the Town's current final plat application checklists; and*
 - vi. *Feedback on the concept plan*
3. *Pre-application review of a concept plan does not create any vested rights and feedback on the concept plan does not grant or infer any official standing or approval. The applicant is responsible for adhering to the ordinance.*
 4. *The concept plan under this section shall be consistent with the current preliminary plat application checklist maintained by the Town.*

18.10 PRELIMINARY PLAT:

- A. *PRELIMINARY PLAT REVIEW PROCESS: Any division of land, unless otherwise exempted in this Title, requires approval of a preliminary plat, approval of subdivision improvement plans, and approval of a final plat. The following outlines the review process for a preliminary plat application, as intended by Utah State Code § 10-9a-604, as amended. If there is any conflict in content or interpretation, the applicable sections of Chapter 6 of Title 10, Article 9a of the Utah Code shall prevail.*
 1. *If the application requires legislative approvals, such as a zone change, annexation, general plan amendment, right of way or easement vacation, or any other legislative action, the legislative approval shall be completed prior to submittal of the Preliminary Plat application.*
 2. *The applicant may request a pre-application meeting with a Town representative to discuss the proposal and submittal requirements. If requested, the Town and applicant shall follow the process outlined in 18.08 (A) of this Title.*
 3. *The Town shall maintain and publish a list of the items comprising a complete preliminary subdivision land use application, including:*
 - a. *A preliminary subdivision land use application form approved by the Town that has been signed by the owner or an authorized agent of the owner, as designated in an owner's affidavit in a form approved by the Town,*
 - b. *An owner's affidavit (if applicable),*
 - c. *Three (3) paper copies of the preliminary plat drawings prepared by a surveyor who is licensed and bonded in the State of Utah and not employed regularly by the Town,*
 - d. *An electronic copy of the preliminary plat drawings,*
 - e. *A breakdown of fees due upon approval of the preliminary Plat application.*
 4. *An applicant shall submit an application, including the Preliminary Plat, Subdivision Improvement Plans, and all required documentation and information.*
 5. *The Town checks the submittal for completeness.*

- a. *If the submittal includes all materials, the Town receives the submittal and starts the review cycle.*
 - b. *If the submittal is found to be incomplete, the submittal is returned to the applicant. No review shall commence until the Town has made a determination that the application is complete.*
6. *If the location is within one hundred (100) feet of a Water Conveyance Facility, within twenty (20) calendar days after receipt of the completed application, the Town shall notify in writing the Water Conveyance Facility Owner(s) of the Application and request comments related to the following aspects of the Water Conveyance Facility: access, maintenance, protection, safety, and any other issues related thereto.*
 - a. *Any Water Conveyance Facility shall have at least twenty (20) days to respond. While the Town may provide comments to the applicant before this twenty (20) day window is complete, the Administrative Land Use Authority shall not grant approval until after at least twenty (20) days after the day on which the Town mailed notice to the Water Conveyance Facility.*
 - b. *Water Conveyance Facility: Shall mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse. See State Code 73-1-15.5-1b.*
7. *Within forty (40) business days of the applicant submitting a complete application under subsection 18.10A(4) the Town shall complete a review of the Preliminary Plat and Subdivision Improvement Plan, except as follows:*
 - a. *The review cycle restrictions and requirements do not apply to the review of subdivision applications affecting property within identified geologic, flood, or other natural hazard areas.*
 - b. *The review cycle restrictions and time limits only apply to single family, two family, and townhome developments. It does not apply to other land uses, such as commercial, industrial, or mixed use.*
8. *After review, the Town will determine if the completed application meets all requirements or requires corrective actions or additional information and shall notify the applicant in a written response:*
 - a. *The Town may require:*
 - (1) *additional information relating to an applicant's plans to ensure compliance with Town ordinances and approved standards and specifications for construction of public improvements; and*
 - (2) *modifications to plans that do not meet current ordinances, applicable standards or specifications, or do not contain complete information.*

- b. *The Town's request for additional information or modifications to plans under subsection 18.10A(8)(a) shall be specific and include citations to ordinances, standards, or specifications that require the modifications to plans, and shall be logged in an index of requested modifications or additions.*
- c. *If the applicant is found to meet all codes, standards, and specifications, the application is forwarded to the Administrative Land Use Authority for review and approval.*
- d. *After receiving the list of required modification or additions, the applicant's resubmittal shall include, in addition to the revised application, a written explanation in response to each of the Town's review comments, identifying and explaining the applicant's revisions or reasons for declining to make the revisions.*
- e. *The applicant's written explanation shall be comprehensive and specific, including citations to applicable standards and ordinances for the design and an index of requested revisions or additions for each required correction.*
- f. *If an applicant fails to address a review comment in the response, the review cycle is not complete and the subsequent review cycle may not begin until all comments are addressed.*
- g. *The Town shall review the resubmittal to ensure that the applicant has responded to each item logged in the index of requested modification or additions of subsection 18.10A(8)(a). If the response does not address each item, the Town shall return the submittal to the applicant.*
- h. *If the resubmittal is complete, the Town shall accept the application for a subsequent review cycle. The time frame to complete the subsequent review depends on how quickly the applicant was able to respond to the corrections in full and if the applicant made any material changes.*
 - (1) *If the applicant responded within forty (40) business days after the Town requires a modification or correction, the Town has forty (40) business days to complete the subsequent review cycle.*
 - (2) *If the applicant responded after forty (40) business days after the Town has required a modification or correction, the Town has sixty (60) business days to complete the subsequent review cycle.*
 - (3) *If the applicant made a material change that merits a new review, then the Town has the discretion to restart the review process at the first review cycle, but only with respect to the portion of the plan set that the material change substantially affects.*
- i. *The review cycle restrictions and time limits apply to single family, two family, and townhome developments. It does not apply to other land uses, such as commercial, industrial, or mixed use.*
- j. *The Town may not require more than four review cycles.*

9. *Unless the change or correction is necessitated by the applicant's adjustment to a plan set or an update to a phasing plan that adjusts the infrastructure needed for the specific development, a change or correction not addressed or referenced in the Town's plan review is waived. But a modification or correction necessary to protect public health and safety or to enforce state or federal law may not be waived.*
 10. *After the applicant has responded to the final review cycle, and the applicant has complied with each modification requested in the Town's previous review cycle, the Town may not require additional revisions if the applicant has not materially changed the plan, other than changes that were in response to requested modifications or corrections.*
 11. *If the Town determines that the resubmittal is now complete and meets all codes, standards, and specifications, the resubmittal shall be forwarded to the Administrative Land Use Authority to complete the review.*
 - a. *If the Town finds the resubmittal does not comply with all applicable codes, standards, and specifications, another review letter and index of requested modifications or additions shall be created and sent to the applicant. This shall be provided to the applicant up until the fourth review cycle, at which point the application shall be forwarded on to the Administrative Land Use Authority for review with a recommendation that the application does not meet all codes, standards, and specifications. The applicant may appeal this determination as outlined in Utah Code 10-9a-604.2(11), as amended.*
 12. *If, on the fourth and final review, the Town fails to respond within forty (40) business days, the Town shall, upon request of the property owner, and within ten (10) business days after the day on which the request is received:*
 - a. *For a dispute arising from the subdivision improvement plans, assemble an appeal panel in accordance with Utah Code 10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or*
 - b. *For a dispute arising from the subdivision ordinance review, advise the applicant, in writing, of the deficiency in the application and of the right to appeal the determination to a designated appeal authority.*
 - (1) *The appeal authority shall be the Town Council.*
- B. PRELIMINARY PLAT APPROVAL PROCESS.** *After review, the application shall be submitted to the Administrative Land Use Authority for approval.*
1. *For preliminary plat and Subdivision Improvement Plans, the Administrative Land Use Authority shall be the Virgin Planning & Zoning Commission.*
 - a. *Any contingent legislative approval, such as a zone change, overlay zone, general plan amendment, annexation, right of way vacation, or other similar approval, shall occur at the Town Council prior to the submittal of a preliminary plat application.*

2. *The Administrative Land Use Authority shall hold a public hearing. A public notice shall be sent to all owners of the property within three hundred (300) feet of the subdivision.*
 3. *The Administrative Land Use Authority shall:*
 - a. *Receive and consider public comment in written form so long as then name and address of the commentor is provided, and orally at the public hear; and*
 - b. *hold no more than one public hearing.*
 4. *If the Administrative Land Use Authority finds that the application complies with the applicable Town ordinances and the requirements of Utah State Code, the Administrative Land Use Authority shall approve the Preliminary Plat application.*
 - a. *The Administrative Land Use Authority shall remand the application back to the applicant for corrections if it finds:*
 - (1) *The applicant has not completed all requirements as outlined in the review index described in subsection 18.10A(8)(b), or*
 - (2) *The application does not address all requirements in this Chapter as well as VULU and the Utah State Code Title 10, Chapter 9a, and although the item was not addressed in the first review, the requirement relates directly to public health and safety.*
 - b. *The Administrative Land Use Authority shall deny the application if the applicant is unwilling to make required corrections or provide required information.*
 5. *In instances where an applicant abandons or otherwise fails to take timely actions to address corrections or complete a project, the application approval shall lapse.*
 - a. *A Preliminary Plat application expires if it is not approved by the Town within six (6) months from the time its application is submitted and accepted. A six (6) month extension may be approved by the Administrative Land Use Authority if requested prior to the expiration of the Preliminary plat application.*
 - b. *Approval of the Preliminary Plat by the Town shall be valid for a period of one (1) year after approval.*
- C. **PRELIMINARY PLAT SUBMISSION REQUIREMENTS:** *The Preliminary Plat shall be prepared by a licensed land surveyor or engineer, shall include the Subdivision Improvement Plans, and shall be consistent with the current preliminary plat application checklist maintained by the Town.*

18.12 FINAL PLAT:

- A. *Within one (1) year of approval of a Preliminary Plat, a Final Plat prepared by a surveyor who is licensed and bonded in the State of Utah and not employed regularly*

by the Town shall be submitted in conformance with this Chapter. If a complete application is not submitted within one (1) year of Preliminary Plat approval, the preliminary plat approval is deemed to have expired.

B. REVIEW. The following outlines the review process for a Final Plat, as intended by Utah Code Ann. § 10-9a-604, as amended. If there is any conflict in content or interpretation, state code shall prevail.

- 1. An applicant may request a pre-application meeting. If so, the Town and the applicant follow the provisions of 18.08 (A) before proceeding to the next step.*
- 2. The Town shall maintain and publish a list of items comprising a complete final plat application, including:*
 - a. A final plat application form approved by the Town that has been signed by the owner, or an authorized agent of the owner, as designated in an owner's affidavit,*
 - b. An owner's affidavit (if applicable).*
 - c. A complete electronic copy of the approved or proposed subdivision improvement plan in PDF format.*
 - d. The breakdown of fees due upon approval of the application.*
- 3. The applicant submits a complete application, including the Final Plat and all required documentation and information.*
- 4. The Town checks the submittal for completeness.*
 - a. If the submittal includes all materials, the Town receives the submittal and starts the review.*
 - b. If the submittal is incomplete, the submittal is returned to the applicant. No review of the application shall occur until the Town has determined that the applicant has submitted a complete application.*
- 5. After a determination that the application submittal is complete the Town begins its review. The Town has a thirty (30) business day review window to conduct its review and provide comments to the applicant.*
 - a. The review period of thirty (30) business days only applies to single-family, two-family, and townhome developments.*
- 6. If the location is within one hundred (100) feet of a Water Conveyance Facility, within twenty (20) calendar days after receipt of the completed application, the Town shall notify in writing the Water Conveyance Facility owner(s) of the preliminary plat application and request comments related to the following aspects of the Water Conveyance Facility: access, maintenance, protection, safety, and any other issues related.*

- a. *Any owner of a Water Conveyance Facility shall have at least twenty (20) days to respond. While the Town may provide comments to the applicant before this twenty (20) day window is complete, the Administrative Land Use Authority shall not grant approval until after at least twenty (20) days after the day on which the Town mailed notice to the Water Conveyance Facility.*
7. *During review, the Town Engineer shall review the Final Plat and shall recommend approval if the Engineer finds that:*

- a. *The subdivision fully complies with the improvements required by this Chapter and other applicable sections of VULU, the ordinances, and other stipulations the Town may have required;*
 - b. *That the survey description is correct; and*
 - c. *That the easements are appropriately located.*
8. *During review, the Town Attorney shall review the Final Plat and shall recommend approval to the Town Engineer if the attorney finds that:*
 - a. *There is a title opinion issued within the last thirty (30) days from a licensed title company showing that the person dedicating the property described on the Final Plat is the title owner as shown in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.*
 - b. *The performance bond and the warranty bond, escrow deposit, letter of credit, or trust deed with the Town is in appropriate form and signed by the necessary parties.*
 - c. *That the applicant has executed the subdivision improvements agreement required by this Ordinance and Town policies.*
 - d. *That the subdivision does not, in the attorney's opinion, violate any ordinance of the Town or the laws of the State of Utah or the rules and regulations promulgated pursuant thereto.*
 - e. *The Town Attorney shall verify that all fees, attorney, engineering fees, Town fees, etc., have been paid.*
9. *Within the review window of subsection 18.12B(5), the Town shall complete a review of the Final Plat and submittal contents and provide a response to the applicant. The Town shall determine whether the application meets all requirements or requires corrective actions or additional information and shall notify the applicant in a written response:*
 - a. *The Town may require:*
 - (1) *additional information relating to an applicant's plans to ensure compliance with Town ordinances and approved standards and specifications for construction of public improvements; and*

- (2) *modifications to plans that do not meet current ordinances, applicable standards or specifications, or do not contain complete information.*
- b. *The Town's request for additional information or modifications to plans under subsection 18.12B(9)(a) shall be specific and include citations to ordinances, standards, or specifications that require the modifications to plans, and shall be logged in an index of requested modifications or additions.*
- c. *If the applicant is found to meet all codes, standards, and specifications, the application is forwarded to the Administrative Land Use Authority for review and approval.*
10. *After receiving the list of required modification or additions, the applicant's resubmittal shall include, in addition to the revised application, a written explanation in response to each of the Town's review comments, identifying and explaining the applicant's revisions or reasons for declining to make the revisions.*
11. *The applicant's written explanation shall be comprehensive and specific, including citations to applicable standards and ordinances for the design and an index of requested revisions or additions for each required correction.*
12. *If an applicant fails to address a review comment in the response, the review cycle is not complete and the subsequent review cycle may not begin until all comments are addressed.*
13. *The Town shall check the resubmittal to ensure that the applicant has responded to each item logged in the index of requested modification or additions described in 18.14A(9)(b). If the response does not address each item, the Town shall return the submittal to the applicant.*
- a. *If the resubmittal is complete, the Town shall review the application and provide written comments within the applicable time frame. The time frame to complete the subsequent review depends on how quickly the applicant was able to respond to the corrections in full and if the applicant made any material changes.*

- (1) *If the applicant responded within thirty (30) business days after the Town requires a modification or correction, the Town has thirty (30) business days to complete the subsequent review cycle.*
- (2) *If the applicant responded after thirty (30) business days after the Town has required a modification or correction, the Town has fifty (50) business days to complete the subsequent review cycle.*
- (3) *If the applicant made a material change that merits a new review, then the Town has the discretion to restart the review process at the first review cycle, but only with*

respect to the portion of the plan set that the material change substantially affects.

- b. The review cycle restrictions and time limits only apply to single family, two family, and townhome developments. It does not apply to other land uses, such as commercial, industrial, or mixed use, nor does it apply to any legislative approval.*
 - c. The Town may not require more than four review cycles.*
- 14. After the applicant has responded to the final review cycle, and the applicant has complied with each modification requested in the Town's previous review cycle, the Town may not require additional revisions if the applicant has not materially changed the plan, other than changes that were in response to requested modifications or corrections.*
- 15. If the Town determines that the resubmittal is now complete and meets all codes, standards, and specifications, the resubmittal shall be forwarded to the Administrative Land Use Authority for review and approval.*
- a. If the Town finds the resubmittal does not comply with all applicable codes, standards, and specifications, another review letter and index of requested modifications or additions shall be created and sent to the applicant. This shall be provided to the applicant up until the fourth review cycle, at which point the application shall be forwarded on to the Administrative Land Use Authority for review with a recommendation that the application does not meet all codes, standards, and specifications. The applicant may appeal this determination as outlined in Utah Code 10-9a-604.2(11), as amended.*
- 16. If, on the fourth and final review, the Town fails to respond within thirty (30) business days, the Town shall, upon request of the property owner, and within ten (10) business days after the day on which the request is received:*
- a. for a dispute arising from the subdivision improvement plans, assemble an appeal panel in accordance with subsection 10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or*
 - b. the Town shall advise the applicant, in writing, of the deficiency in the application and the right to appeal the determination to a designated appeal authority.*

(1) The appeal authority shall be the Town Council.

- C. FINAL PLAT SUBMITTAL REQUIREMENTS: A Final Plat prepared by a registered land surveyor shall be required for all subdivisions and shall be consistent with the Subdivision Submittal Checklist maintained by the Town.*
- D. ACCEPTANCE OF STREETS AND OTHER PUBLIC LAND DEDICATION. Acceptance of dedication of proposed public lands or streets or street right-of way in an approved Final Plat can be made only by signature of the mayor. Final Plat approval will be deemed as acceptance of dedication unless streets and other public spaces are shown as “not*

intended for dedication” in the case of a Planned Development or Condominium Development.

E. SURVEY CERTIFICATION. The surveyor making a Final Plat shall certify on the plat that it conforms to these survey regulations and to all applicable state laws. The certification shall include the surveyor’s name and seal.

F. COMPLETING A FINAL PLAT APPLICATION REVIEW. After the review cycle process has been completed, the application shall be submitted to the Administrative Land Use Authority for approval.

1. For Final Plat approval, the Development Review Committee (DRC) is the Town’s Administrative Land Use Authority

a. No public hearing may be held for the subdivision Final Plat approval.

2. The Administrative Land Use Authority shall approve the Final Plat if it finds:

a. The proposed plat complies with the requirements of the Town Code, Utah State Code, and all other applicable policies and regulations.

b. The Final Plat has been approved by the culinary water authority.

c. The Final Plat has been approved by the sanitary sewer authority, and

d. If applicable, the Final Plat has been approved by the health department.

3. The Administrative Land Use Authority may deny or remand the proposed Final Plat if:

a. The Administrative Land Use Authority finds the applicant has not provided a complete, accurate, and satisfactory response to all comments during review and any other point of non-compliance with applicable regulations; and

b. The applicant is unwilling to make required corrections or provide required information.

4. Any appeal shall be consistent with the provisions of Utah Code 10-9a-604.2.

G. RECORDING OF FINAL PLAT.

1. Once all requirements have been met, and the Administrative Land Use Authority has approved the Final Plat, the applicant shall submit a twenty-four by thirty-six-inch (24” x 36”) mylar drawing of the corrected final subdivision plat with:

a. The signatures of each owner of land are described on the plat.

b. The surveyor certification, as described in Utah Code 10-9a-603(6).

c. An opportunity provided to each utility provider to sign the plat.

2. *Before the Final Plat can be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah, the following shall occur:*
 - a. *The Town shall review the mylar version of the Final Plat for completeness and consistency with the version of the Final Plat approved by the Administrative Land Use Authority.*
 - b. *The Town shall collect all required signatures from Town Officials, the Hurricane Valley Fire District, the Ash Creek Special Service District.*
 - c. *The Developer shall complete the required public improvements and common areas/elements of the development or provide the Town with security guaranteeing that the public improvements will be installed and free of defects for a period of two years after said improvements are inspected and accepted by the Town thru the posting two bonds: 1) a performance/payment bond, and 2) a warranty bond in the amounts and forms provided for in Section 18.18. The payment/performance bond need not be posted with the Town if the public improvements and common areas within the Final Plat have already been completed and accepted by the Town.*
 - d. *The Developer shall provide signed and notarized covenants, conditions and restrictions (CC&R's) for the subdivision, if applicable.*
 - e. *The Developer shall provide a signed and notarized development agreement, if applicable.*
 - f. *The Developer shall provide signed and notarized deeds and agreements for any easement, if applicable.*
 - g. *The Developer shall provide the recordation fee, made in favor of the Office of the Washington County Recorder.*
 - h. *The Developer shall provide all required impact fees and any other fees required to be paid to the Town.*
3. *Once all the above actions have occurred, the Town Attorney or his/her designee shall record the Final Plat in the Official Records on file in the Office of the Recorder of Washington County, State of Utah. In no instance shall a fully executed Final Plat be released to an applicant or property owner for recording on their own.*
4. *Within thirty (30) days after recording a Final Plat, the Town shall submit to the Geospatial Resource Center (UGRC) for inclusion in the unified statewide 911 emergency database. This shall include:*
 - a. *An electronic copy of the approved Final Plat, or*
 - b. *Preliminary geospatial data that depicts any new streets and situs addresses proposed for construction within the bounds of the approved plat.*

18.14 REQUIREMENTS FOR DESIGN AND IMPROVEMENTS:

A. *LAND SUITABILITY. No land shall be developed which is held to be unsuitable for any proposed use if identified as being environmentally sensitive. Areas identified as being environmentally sensitive include, but are not limited to:*

- 1. All areas mapped as floodplain by the Federal Emergency Management Agency (FEMA), Utah Department of Natural Resources, or other public or private entity, and deemed unsuitable for the proposed development under the Flood Damage Prevention sections of the Town ordinances (See VULU chapter 22).*
- 2. All wetlands as defined in federal and*
- 3. All areas having slopes greater than thirty percent (30%).*
- 4. Areas that are proven to provide habitat for rare, threatened or endangered species, unless species have been removed by certified experts under procedures approved by all authorized entities.*
- 5. Burial sites and Indian mounds.*
- 6. Drainage ways that contain running water during spring runoff or during storm events as well as any State or Federal required buffers from the edges of the drainage way.*
- 7. Areas determined to be environmentally sensitive may be included as common open space in a subdivision but shall be included in the development Yield Analysis in VULU Chapter 18.14 B. These lands shall be identified as an out-lot or other designation that indicates the land is not available for development.*

B. *DEVELOPMENT YIELD. The number of residential units for a parent parcel shall be determined in accordance with the following:*

- 1. Base development yield is set by underlying zoning district in which a parcel or parcels to be subdivided is located. Unless bonus development yield is approved by the Town as set forth below, the base development yield shall be the total gross acreage to be subdivided (expressed in square footage) divided by minimum lot size (expressed in square footage) for the zoning district where the parcel(s) are located. For example, if a 7 acre parcel located in the R-A zone (minimum 1 acre lots) is proposed to be subdivided the base development yield shall not exceed 7 lots.*
- 2. The base development yield may be increased if the parent parcel(s) complies with one or more of the following standards. Each standard provides a development yield bonus of five percent (5%) in addition to the base development yield. The maximum bonus permitted is twenty percent (20%).*
 - a. Provides open space that greater than 25% of parcel.*
 - b. Providing for access by the general public to trails, parks, or other recreational facilities, excluding golf courses;*

- c. *Reusing historical buildings and structures, including those sites inventoried by the State Historical Society of Utah. The U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Properties shall apply.*
- d. *Implementing approved professional grazing management plan on open space designed to maintain natural vegetation while reducing noxious plant populations.*
- e. *Maintaining an approved agricultural use under a permanent approved professional management plan on open space.*
- f. *Implementing approved permanent, enforceable policies of strict xeriscaping and water conservation throughout the development.*
- g. *Implementing innovative low impact wastewater treatment (requires Town-approved professional plan and specs).*
- h. *Implementing trails improved and connected as preferred by the Town.*

C. GENERAL PERFORMANCE STANDARDS

1. Stormwater Management.

- a. *The development should capture 80% of the sediments/pollutants from the one (1) year storm event.*
- b. *Natural open drainage systems (i.e., washes and dry riverbeds) should be used or bypassed as recommended by the Town Engineer.*

2. Open Space Design.

- a. *The uses within the open space shall be accessible to the residents of the development. These uses may also be available to the general public providing the proper approvals are received. Open space shall not be part of individual residential lots. Open space shall be undivided and restricted in perpetuity from future development.*
- b. *The following areas or structures may be located within the open space area and shall be counted toward the overall open space percentage required:*
 - 1) *Parking areas for access to and use of the open space developed at a scale limited to the potential users of the open space,*
 - 2) *Privately held buildings or structures provided they are accessory to the use of the open space.*
 - 3) *Shared septic systems and shared potable water systems.*
 - 4) *Road rights of way shall be counted towards the required minimum open space.*
 - 5) *A pathway system connecting open space areas accessible to neighborhood residents and connecting these areas to neighborhood*

streets and to planned or developed trails on adjacent parcels shall be identified in the plan.

3. *Sewage and Water Facilities.*

- a. Water for a subdivision shall be provided by approved hookups to the Town water supply.*
- b. All subdivisions shall be provided with adequate wastewater treatment systems, either separate, shared, or community, as determined the Ash Creek Special Service District.*

4. *Financial Guarantee.*

- a. A financial guarantee ensuring the construction and completion of the common facilities shall be submitted in compliance with Section 18.18.*

18.16 OWNERSHIP AND MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES:

A. *ALTERNATIVES. The designated common open space and common facilities may be owned and managed by one or a combination of the following:*

- 1. A homeowners' association;*
- 2. a condominium association established in accordance with the laws of the State of Utah;*
- 3. a nonprofit conservation organization;*
- 4. the Town or another governmental body empowered to hold an interest in real property; or*
- 5. an individual who will use the land for open space purposes as provided by a conservation easement.*

B. *HOMEOWNERS' ASSOCIATION.*

- 1. A homeowner's association shall be established if common facilities, amenities, or open space is proposed to be owned by a homeowner's association.*
- 2. Membership in the association is mandatory for all purchasers of homes in the development and their successors. The homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners' association shall be submitted for approval to the Town as part of the information required for the preliminary plat. The homeowners' association bylaws or the declaration of covenants, conditions and restrictions of the homeowners' association shall contain the following:*
 - a. The legal description of the common land;*

- b. *a description of common facilities;*
- c. *the restrictions placed upon the use and enjoyment of the lands or facilities;*
- d. *persons or entities entitled to enforce the restrictions;*
- e. *a mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums;*
- f. *a mechanism for resolving disputes among the owners or association members;*
- g. *the conditions and timing of the transfer of ownership and control of land facilities to the association;*
- h. *language requiring that any termination of or amendment to the homeowners' association bylaws, or to the declaration of covenants, conditions, and restrictions of the homeowner's association, will not take effect unless approved by the Virgin Land Use Authority; and*
- i. *any other matter the developer deems appropriate.*

C. *CONDOMINIUM ASSOCIATIONS. If the common open space and facilities is to be held under the Condominium Ownership Act, the condominium instruments shall identify the restrictions placed upon the use and enjoyment of the common open space. All common open space shall be held as a "common element."*

D. *A NONPROFIT CONSERVATION ORGANIZATION. If the common open space is to be held by a nonprofit conservation organization, the organization must be acceptable to the Town. The conveyance to the nonprofit conservation organization must contain appropriate provisions for reversion in the event that the organization becomes unwilling or unable to uphold the terms of the conveyance.*

E. *PUBLIC DEDICATION OF OPEN SPACE AND STREETS. The Town may accept the dedication of fee title or dedication of a conservation easement to the common open space. The Town may accept the common open space provided:*

- 1. *The common open space is accessible to the residents of the Town.*
- 2. *The Town agrees to and has access to maintain the common open space.*
- 3. *Streets or other public ways which have been designated on a duly adopted official map or element of the Town General Plan shall be dedicated or reserved by the applicant to the Town. The street or public way shall be made a part of the plat in the locations and dimensions indicated in the comprehensive plan and as set forth in this ordinance.*

F. *INDIVIDUAL OWNERSHIP. An individual may hold fee title to the land while a nonprofit or other qualified organization holds a conservation easement uses for the common open space.*

G. MAINTENANCE PLAN. Subdivisions with proposed open space must include a plan that provides evidence of a means to properly manage the common open space in perpetuity and evidence of the long-term means to properly manage and maintain all common facilities, including any storm water facilities.

1. The plan shall be approved by the Virgin Administrative Land Use Authority prior to final plat approval. Any future amendments to the plan must be approved by the Virgin Administrative Land Use Authority. The plan shall do the following:

- a. designate the ownership of the open space and common facilities in accordance with Chapter 18.16;*
- b. establish necessary regular and periodic operation and maintenance responsibilities;*
- c. estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an ongoing basis; and*
- d. include a land stewardship plan specifically focusing on the long-term management of Common Open Space lands. The land stewardship plan shall include a narrative, based on the site analysis required in Chapter 18.14, describing:*

(1) Existing conditions including all natural, cultural, historic, and scenic elements in the landscape;

(2) the proposed end state for each common open space area; and the measures proposed for achieving the end state;

(3) proposed restoration measures, including measures for correcting increasingly destructive conditions, such as erosion or noxious weeds; and measures for restoring historic features and habitats or ecosystems; and

(4) the operations needed for maintaining the stability of the resources, including: mowing schedules; weed control; planting schedules; clearing and cleanup.

e. At the Town's discretion, the applicant may be required to place in trust sufficient funds to provide maintenance and operation of common facilities in perpetuity.

2. In the event that the organization established to own and maintain the open space and common facilities, or any successor organization, fails to maintain all or any portion of the common facilities in reasonable order and condition upon the residents and owners of the open space and common facilities, setting forth the manner in which the organization has failed to maintain the common facilities in reasonable condition.

a. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made.

- b. *Upon failure to comply within the time specified, the organization, or any successor organization, shall be considered in violation of this ordinance, in which case the bond, if any, may be forfeited, and any permits may be revoked or suspended.*

(1) The Town may enter the premises and take corrective action.

(2) The costs of corrective action by the Town shall be assessed ratably, in accordance with tax assessments, against the properties that have the right of enjoyment of the common facilities and shall become a lien on said properties.

(3) The Town, at the time of entering upon such common facilities for the purpose of maintenance, shall file a notice of such lien in the Official Records on file in the Office of the Recorder of Washington County, State of Utah such that it can be indexed against all lots within a development.

- c. *Management plans can be amended by the owner identified under Section 18.16.A with the approval of the Virgin Land Use Authority.*

18.18 FINANCIAL RESPONSIBILITY FOR ALL SUBDIVISIONS:

A. IMPROVEMENT COMPLETION ASSURANCE.

1. *The Town, in its discretion, may allow an applicant to record the Final Plat in the Official Records on file in the Office of the Recorder of Washington County, State of Utah if the applicant guarantees the installation and construction of the required improvements in a good, workmanlike, lien-free manner and in compliance with all Town standards, by providing a financial improvement completion assurance and agreement which guarantees completion of the improvements within two (2) years of the date of Final Plat recordation (the "Improvement Completion Assurance").*
2. *The Improvement Completion Assurance shall be in the form of either a bond agreement with a surety company licensed to do business in the State of Utah, or an irrevocable letter of credit with a financial institution federally or state insured, in an amount equal to one hundred percent (100%) of the cost of the required public improvements and common area improvements, plus ten percent (10%), as estimated by the applicant's engineer which is then reviewed and approved by the Town Engineer. The Improvement Completion Assurance shall be in a form acceptable to the Town and approved by the Town Attorney. The Improvement Completion Assurance shall include but not be limited to the following terms:*
 - a. *Completion of the improvements within a period of time not to exceed two (2) years from the date the agreement is executed.*
 - b. *The improvements shall be completed to the satisfaction of the Town and according to the Town's adopted engineering standards.*

- c. The applicant assigns, transfers, and sets over to the Town all of applicant's right, title, and interest in and to the Bond/Loan and the full proceeds of the Bond/Loan ("Bond Proceeds").*
 - d. The Bond Proceeds may be reduced upon request of the Applicant as the improvements are installed. The amount of the reduction shall be determined by the Town. Such requests may be made only once every 60 days, and no reductions shall be authorized until such time as the Town has inspected the improvements and found them to be in compliance with the Town standards. All reductions shall be by the written authorization of the Town.*
 - e. If the Bond Proceeds are inadequate to pay the cost of the completion of the improvements according to the Town standards for whatever reason, including previous reductions, then the applicant shall be responsible for the deficiency.*
 - f. If upon written demand of the Town after expiration of the time period Bond Proceeds are not transferred to the Town within 30 days of the demand, then the Town's costs of obtaining the Bond Proceeds, including the Town Attorney's Office costs or outside attorney's fees and court costs, shall be deducted from the Bond Proceeds.*
 - g. In the event the applicant is in default or fails to or neglects to satisfactorily install the required improvements within two (2) years from the date of approval by the Town Council, or to pay all liens in connection therewith, the Town Council may declare the bond forfeited and the Town may install or cause the required improvements to be installed, using the Bond Proceeds to defray the expenses thereof.*
 - h. Upon receipt of the Bond Proceeds, after the expiration of the time period, the costs of completion shall include reimbursement to the Town for the costs of administration of the completion of the improvements.*
 - i. The applicant agrees to hold the Town harmless from any and all liability which may arise as a result of the improvements which are installed until such time as the Town accepts the improvements as provided in this chapter.*
 - j. The Town shall have the right to inspect the improvements during construction.*
- 3. At the completion of the work, or not less than ten (10) days prior to the release date of the Improvement Completion Assurance, the Town Engineer, or authorized representative, shall make a preliminary inspection of the improvements and shall submit a report to the Town Council setting forth the conditions of such facilities.*

The Town shall release the Improvement Completion Assurance under this subsection once all improvements are inspected and approved by the Town as required by this title and the applicant has submitted to the Town a warranty in a form acceptable to the Town pursuant to this chapter. Part of the Bond Proceeds may be retained by the Town, in its sole discretion, in the amount described in Subsection 18.18B(2) to cover the amount of the warranty described in Subsection 18.18B.

B. WARRANTY OF IMPROVEMENTS.

- 1. Each applicant shall warrant that all improvements required under this chapter shall be free from defects in material and workmanship and that the improvements are in compliance with all of the Town standards for a period of two (2) years (the "Warranty Period") and agree to make all repairs to and maintain the improvements and every part thereof in good condition during the Warranty Period at no cost to the Town. The Warranty Period shall start on the date the Town approves all of the improvements pursuant to this chapter, and the applicant provides the Town with a warranty in a form acceptable to the Town and approved by the Town Attorney.*
- 2. The warranty required by this chapter shall be in the form of either a bond agreement with a surety company licensed to do business in the State of Utah, or an irrevocable letter of credit with a financial institution federally or state insured, under terms acceptable to the Town in the amount of 10% of the lesser of the: (i) Town Engineer's original estimated cost of completion; or (ii) Applicant's reasonable proven cost of completion. The warranty hereunder shall include but not be limited to the following terms:*
 - a. All responsibility for repair and maintenance of the improvements remains with the applicant until the expiration of the Warranty Period.*
 - b. If the Town identifies to the applicant an aspect of the improvements which needs repair, in its sole discretion, prior to the expiration of the Warranty Period, then said Warranty Period shall be extended, as to that aspect of the improvements only, until the repair or replacement has been completed to the satisfaction of the Town.*
 - c. The applicant assigns, transfers, and sets over to the Town all of applicant's right, title, and interest in and to the Bond/Loan and the full proceeds of the Bond/Loan ("Bond Proceeds").*
 - d. Whenever, in the judgment of the Town Engineer, whose decision upon the matter shall be final and binding upon the applicant, said work shall be in need of repairs, maintenance, rebuilding, the applicant shall be notified in writing. If the work described in the notice is not completed within thirty (30)*

calendar days from the date of notice, the Town shall have such repairs made, and the cost, plus twenty-five percent (25%) for Town Administration, shall be paid by the applicant.

- e. If the Bond Proceeds are inadequate to pay the cost of the completion of the improvements according to the Town standards for whatever reason, including previous reductions, then the applicant shall be responsible for the deficiency.*
 - f. If the installed improvements are not free of defects at the conclusion of the Warranty Period, the Town may unilaterally (without consent or approval of any kind from the applicant) at any time thereafter withdraw the remaining balance of the Bond Proceeds. The Town shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the Bond Proceeds withdrawn as is required (in the Town's sole opinion) to satisfactorily complete the repair of any defects in the improvements, including (without limitation) the cost of any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the Town to effectuate said repair.*
- 3. After the expiration of the Warranty Period, a final inspection of the improvements shall be made by the Town Engineer, at the conclusion of which the Town shall release the warranty, less costs to repair deficiencies found in the inspection. If repair costs are in excess of the retainage, the applicant shall pay the overage. Release of the warranty or forfeiture of the warranty and the Town acceptance of the improvements does not waive the Town's right to any other remedy available at law.*

SECTION 2 - Severability. Should any part or provision of this ORDINANCE be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ORDINANCE as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 3 - Effective Date: This ORDINANCE shall be in full force and effect immediately upon approval.

SECTION 4 - Repealer Clause: All Town ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by The Town Council this __ day of November, 2024.

VIRGIN TOWN

Attest:

Jean Krause, Virgin Town Mayor

Krystal Percival, Virgin Town Recorder

[GOVERNING BODY] Vote as Recorded:

AYE NAY ABSENT

[GOVERNING BODY] Member [NAME]	_____	_____	_____
[GOVERNING BODY] Member [NAME]	_____	_____	_____
[GOVERNING BODY] Member [NAME]	_____	_____	_____
[GOVERNING BODY] Member [NAME]	_____	_____	_____
[GOVERNING BODY] Member [NAME]	_____	_____	_____
[GOVERNING BODY] Mayor/President	_____	_____	_____