

When Recorded Return To:  
City of Toquerville  
212 Toquerville Blvd  
PO Box 27  
Toquerville, Utah. 84774

Affects Parcel No. T-75-B-1

## **IMPROVEMENT DEFERRAL AGREEMENT**

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

### **RECITALS**

WHEREAS, Applicant is the owner of the following parcel of real property located in Toquerville City, Washington County, State of Utah (“Property”), which is more particularly described as:

***See Exhibit “A”***

WHEREAS, Applicant has submitted a simple subdivision application for the Property (“Subdivision”); and

WHEREAS, Pursuant to Title 10, Chapter 5, Sections 2 & 3 and Title 10, Chapter 19, Article E, Section 6 of the Toquerville City Code (“City Code”), applicants seeking the approval of a simple subdivision (and ultimately a building permit and certificate of occupancy) from the City are required to construct public street and access road improvements, including curb, gutter, storm drain, sidewalk and pavement (“Improvements”), consistent with the street improvement standards in effect at the time of applications. These improvements are required as conditions of both subdivision approval and issuance of a building permit.

WHEREAS, pursuant to Title 10, Chapter 5, Section 2(A) of City Code, the City may determine that installation of Improvements is not appropriate or practical at the time of development. In such cases, the City may condition issuance of a certificate of occupancy upon the applicant providing adequate security to guarantee that the required Improvements will be completed at a later date at no additional cost to the City.

WHEREAS, pursuant to Section 3, of Title 10, Chapter 5 of the City Code, an applicant can provide the necessary security for the City by either:

- a) Cash Bond. Paying to the City an amount that is equivalent to 125% of the estimated cost of labor and materials to construct the Improvements (as determined and certified by the City’s engineer) (“Improvement Costs”) and that the City can use said funds

to pay for the installation of the Improvements in the future when the City, in its sole discretion, determines it is proper.

b) Cash on Deposit Bond. Depositing an amount equivalent to 125% of the estimated cost of labor and materials to construct the Improvements with: i) a licensed and bonded escrow company, ii) a law firm with a Utah based IOLTA account, or iii) a state or federally chartered financial institution that is FDIC insured subject to an escrow or demand agreement entered into between the applicant, the City and the holder of the funds whereby the fund holder agrees to hold and not release/disburse the funds back to the applicant without the City's consent and which indicates that the holder of funds shall also disburse part or all of the escrowed/deposited funds to the City upon its request.

c) Recorded Deferral Agreement. Entering into written deferral agreement that is notarized by the applicant and capable of being recorded in Official Records on file in the Office of the Recorder of Washington County, State of Utah, wherein the applicant (or his/her/their successor) agrees to promptly pay their proportional share of the cost of installing the Improvements as part of a larger improvement project, upon demand by the City ("Deferral Agreement"). The Deferral Agreement shall also contain an affirmative covenant wherein the applicant, on behalf of themselves and their successors, agrees to waive the right to object to the City or Washington County creating a special assessment area to fund and construct the Improvements as part of a larger improvement project.

WHEREAS, the Applicant has applied for a deferral of the obligation to install the Improvements by entering into a recorded Deferral Agreement, and the Toquerville City Council has determined that unusual circumstances exist. The surrounding properties were developed without curb, gutter, sidewalk, or other Improvements. Installing Improvements at this time would be impractical, as they would not align with existing conditions and would be better addressed as part of a future comprehensive update of the street and surrounding infrastructure.

WHEREAS, based on the City's findings of unusual circumstances, the City agrees to approve the Applicant's Subdivision application provided that the Applicant executes this Deferral Agreement and authorizes its recording against the Property. This creates a contractual obligation between the Applicant and the City, under which the City may, at any time it deems necessary and reasonable, require the installation of the Improvements. The Applicant or any successor owners of the Property shall be responsible for paying the cost of the Improvements, or their proportional share if part of a larger project, within 30 days of completion. Approval of the Subdivision and any future building permits, as well as issuance of a Certificate of Occupancy (assuming all building codes and regulations have been complied with), shall be subject to compliance with this Agreement and all applicable City requirements.

### **AGREEMENT**

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

1. Subdivision Approval. Upon: a) the Applicant's notarized execution of this Deferral Agreement and delivery of the same to the City 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 Property, and b) submittal of a complete Simple Subdivision application, including Subdivision Improvement Plans, meeting all requirements of the City's Subdivision Submittal Policy and Section 10-19E of the City Code, the City agrees to approve the Applicant's Subdivision application subject to the terms of this Deferral Agreement.

2. Building Permit. Subject to compliance with all applicable City requirements, including payment of fees and submission of required plans, the City agrees to issue building permits for the Property as appropriate.

3. Certificate of Occupancy. So long as Applicant has obtained a building permit, paid all necessary fees and costs, and have constructed the Residence in compliance with all applicable building and safety codes (as evidenced by passage of all necessary inspections), the City will issue a Certificate of Occupancy for the Residence.

4. Payment of All Costs to Install Improvements In The Future. If, and when, the City, 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 Property or as part of a larger improvement project), the City shall give the Applicant or the current owner of the Property notice of the City's intent. Once the installation of the Improvements are complete, the City shall provide Applicant or the current owner of the 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 Property expressly covenants and agree to reimburse the City in full for the amount set forth in the Payment Notice within 30 days of its issuance.

5. Special Assessment Area ("SAA") Waiver and Agreement to Pay Proportional Share. If the City: a) determines it is appropriate to create a Special Assessment Area ("SAA") which includes the Property to fund the installation of the Improvements, or b) determines to install the Improvements as part of an City 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. Furthermore, Applicant, expressly acknowledges and understands that SAAs may be created for the construction and installation of other types of public infrastructure other than the Improvements and thus agrees to be responsible for the payment of, and not object to, any SAA or component thereof, that the City deems necessary and prudent to be constructed which is over and above (or in lieu of) the Improvements.

6. 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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7. Default. In the event of default of Applicant, or its successors or assigns, of any of the terms of this Agreement, Applicant authorizes the City to install the Improvements of the Property's frontage. Applicant agrees to pay the City for all costs and expenses incurred in

installing the Improvements. Applicant agrees to pay the City Ten Percent (10%) interest on the total amount due from the date of completion of the Improvements, until paid in full.

8. 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.

9. 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 Property and shall act as a lien upon the 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.

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

11. 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.

12. Governing Law. This Agreement shall be governed, interpreted, and construed by the laws of the State of Utah.

13. 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:**

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NOTARY PUBLIC

CITY OF TOQUERVILLE  
A Utah Municipal Corporation

Daisy Fuentes, Recorder

STATE OF UTAH )  
 )ss:  
COUNTY OF WASHINGTON )

NOTARY PUBLIC

STATE OF UTAH )  
 )ss:  
COUNTY OF WASHINGTON )

NOTARY PUBLIC

**EXHIBIT "A"**

(Legal Description of Property)

*ALL OF LOT \_\_\_\_\_ OF THE \_\_\_\_\_ SUBDIVISION,  
According to the Official Plat thereof in the Office of the Recorder of Washington  
County, State of Utah.*

*LESS AND EXCEPTING \_\_\_\_\_.*

*SUBJECT TO \_\_\_\_\_ appearing of record or  
enforceable in law and equity.*

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