

## **GATE IMPROVEMENT & ENCROACHMENT AGREEMENT**

THIS GATE IMPROVEMENT & ENCROACHMENT AGREEMENT (“Agreement”) is entered into effective this \_\_\_\_ day of February, 2026 (“**Effective Date**”), by and between VIRGIN TOWN, a Utah municipal agreement (“**Town**”) and the RIO DE SION HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation (“**RDS HOA**” or “**Association**”). Throughout this Agreement the Town and the RDS HOA may be referred to individually as a “**Party**” and collectively as “**the Parties**”.

### RECITALS

WHEREAS the Town is the fee simple owner of a 60 foot improved road right-of-way located in the Rio de Sion residential subdivision (“**Rio de Sion Subdivision**”) in Virgin, State of Utah known as Entrada Drive (“**Entrada Drive**”) which originates at an intersection with Camino Del Rio Street on the North and Willard Drive on the East and runs westerly through Rio de Sion.

WHEREAS the Rio de Sio Subdivision is multi-phased dead-end residential subdivision lying on the South side of the Virgin River with its sole point of entry and exit being Entrada Drive.

WHEREAS because of Camino Del Rio’s access from Utah State Road Nine (“**SR-9**”) which is the West entry road into Zions National Park and the fact that Camino Del Rio possesses a new concrete bridge that traverse across the Virgin River, the Rio de Sion Subdivision and its residents experience a high number of non-resident vehicle traffic – assumingly from persons looking to gain access to public lands south of the Town.

WHEREAS the RDS HOA is the association of home and lot owners within the Rio de Sion Subdivision as well as the entity charged under the recorded subdivision plats for each phase and the covenants conditions and restrictions recorded against the Subdivision (“**CC&Rs**”) with owning and maintaining various areas of the development as “common areas”.

WHEREAS due to outcry and repeated requests from its member residents, the RDS HOA has made presentation to the Town and requested that the Association be allowed to construct and maintain, at its sole expense, an electric gate across Entrada Drive at the entrance into the Rio de Sion Subdivision (which would remain closed, thus blocking travel on Entrada Drive) and open only upon entry of a special code) as a means of preventing unnecessary and unwanted vehicular traffic on the roads within the Subdivision (“**Gate Request**”).

WHEREAS as part of the Gate Request, the RDS HOA requested to, but does not yet own and maintain the roads within the Rio de Sion Subdivision - a condition which the Town, acting by and through its Town Council, would require if vehicular entry into the Subdivision by the general public was prohibited.

WHEREAS in an effort to support the residents of the Rio de Sion Subdivision, the Town Council has agreed to allow the RDS HOA to construct a gate system and other improvements blockading Entrada Drive subject to several conditions – the chief among them being that the gates

must freely open to vehicles entering and exiting the subdivision when a vehicle drives over a pressure pad installed in the road in front of the entrance and exit gates (the idea being the gates will give the perception to those not familiar with the area that the Rio de Sion Subdivision is a security gated private subdivision and thus turn around).

WHEREAS the Parties have discussed the gate system and the nuances of the arrangement and now desire to reduce their understandings and agreements into a written instrument to memorialize the Parties mutual covenants and obligations.

### AGREEMENT

NOW THEREFORE based upon the mutual obligations of the Parties set forth below, and other good and valuable consideration, the Parties covenant and agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

2. Construction of Gate Improvements.

a. *Scope*. RDS HOA shall retain a contractor who is licensed and bonded in the State of Utah (“**Prime Contractor**”) to oversee and administer:

i. the fabrication and installation of the electric opening gate system as identified and depicted in Exhibits “B” and “C” (“**Gate System**”). The location of the Gate System shall be substantially as depicted in **Exhibit “B”**, subject to field adjustments as reasonably necessary to accommodate existing conditions.

ii. the construction of the site improvements in the areas of Entrada Drive identified in Exhibit “A” including the installation of the center islands depicted and described in Exhibits “A” and “B”, the grading and installation of a level gravel surface along a 20 foot wide radius depicted in Exhibit “A” to serve as a turnaround for drivers who wish to turn their vehicles around after observing the gates visually blocking Entrada Drive, and the installation of “vehicle loops” and “loop sensors” to activate and commence opening the appropriate gate when a vehicle is sensed as being inside of the loop. (collectively “**Site Improvements**” and together with the Gate System “**the Gate Improvements**”).

b. *Financial Burden*. The RDS HOA shall be solely responsible to pay for the Gate Improvements.

c. *Payment & Warranty Assurance*. Because Entrada Drive is a public road, owned and maintained by the Town, all contractors and suppliers providing material, labor and equipment to the Gate Improvements project cannot place mechanic’s liens against said road or any other road owned and maintained by the Town in the event of non-payment. Accordingly, prior to commencement of construction on the Gate Improvements, RDS HOA shall deposit with the Town an amount equal to 110% of the accepted bid price from

the Prime Contractor ("**Payment Assurance**"). Thereafter, upon the submission of a draw request initiated by the Prime Contractor and approved in writing by RDS HOA, the Town will disburse a joint check made payable to both the RDS HOA and the Prime Contractor up to 90% of the Payment Assurance, inclusive of the Deposit Credit (as defined below). The remaining 10% shall be held for a period of up to one year (the "**Warranty Period**") to act as a "**Warranty Assurance**" and utilized only in compliance with the provisions of this Section. The Parties acknowledge that RDS HOA, prior to the Effective Date, has made a deposit of \$25,000 with the Prime Contractor (the "**Deposit Credit**"), accordingly such amount shall be credited against the total Payment Assurance required to be deposited with the Town; provided, however, that such Deposit Credit shall not reduce the total amount of funds retained by the Town as Warranty Assurance pursuant to this Section. For illustrative purposes only, if the accepted bid price were \$100,000.00, the Payment Assurance would equal \$110,000.00. After application of the \$25,000.00 Deposit Credit, the amount required to be deposited with the Town would be \$85,000.00. The Town would retain \$11,000.00 as Warranty Assurance, representing 10% of the Payment Assurance.

d. *Construction Compliance.* The Gate Improvements shall be constructed in compliance with the plans attached as Exhibits "A", "B" & "C" below and the descriptions contained in this Agreement (collectively "the Gate Improvement Plans"). In the event of any conflict between this Agreement and the Exhibits, this Agreement shall control.

e. *Encroachment Permit.* Prior to commencement of construction of any aspect of the Gate Improvements, the Prime Contractor shall submit and obtain an encroachment permit. The Parties stipulate and agree that the application fee for said permit shall be waived and that the Warranty Assurance deposited with, and retained by, the Town during the Warranty Period (defined above) shall satisfy the encroachment bond requirements.

f. *Inspection.* All work contemplated under this Agreement shall be done to the satisfaction of the authorized representatives of the Town, and the Town hereby reserves the right to order the change of location, removal and replacement of any component of the Gate Improvements not installed in conformance with the Gate Improvement Plans, or if the Gate Improvement Plans lack sufficient detail, then in compliance with the Town's Standards and Specifications for Public Improvements. Any change, removal or replacement shall be timely made by the Prime Contractor and paid for at the sole expense of the RDS HOA.

3. Indemnification. By executing this Agreement, the RDS HOA, and its successors or assigns, covenant and agree to indemnify, defend and hold the Town harmless from any and all claims, actions or damage of every kind and nature which may accrue to, or be suffered by, any person(s), corporations or property by reason of the construction of the Gate Improvements, performance of any such work, materials used, or manner of installation, maintenance, and operation, or by the improper occupancy of said highway right of way. If any suit or action is brought against the Town arising out of this Agreement, the RDS HOA, their successors, or assigns, will, upon notice to it of the commencement of such action, defend the same at its sole cost and expense and satisfy any judgment which may be rendered against the Town in any such suit or action.

4. Drainage. If the Gate Improvements interferes in any way with the drainage of Entrada Drive the RDS HOA shall, at its own expense, make such drainage provisions as the Town may reasonably direct.
5. Future Changes to Entrada Drive. If the Town determines, in its sole discretion, that necessary changes to Entrada Drive requires changes in structure or location of the Gate Improvements installed under this Agreement, the RDS HOA shall timely make the necessary changes without expense to the Town.
6. Post Construction Clean-Up. Upon completion of the Gate Improvements project contemplated by this Agreement, all rubbish, debris, materials, equipment and vehicles shall be immediately removed from Entrada Drive/Red Hill Lane (including roadside shoulders) such that said roads are left in a neat and presentable condition satisfactory to the Town.
7. Limitation of Traffic Interference. RDS HOA shall require of their Prime Contractor work with the Town to coordinate all work as well as possible lane closures in such a way that the least interference with traffic flow and other operations of the Town occurs.
8. Perpetual Maintenance. RDS HOA shall maintain, at its sole expense, all aspects of the Gate Improvements in a condition satisfactory to the Town. RDS HOA also reserves the right to remove the gate, in their sole discretion, at any time in the future with the provision that any road and affected improvement repairs and restoration will also be made at the time of said removal, and to a condition reasonably acceptable to the Town.
9. Road Repairs. In the event any surface areas (and corresponding sub-base) of Entrada Drive need to be repaired/replaced on account of settling, defective installation of the Gate Improvements, or negligence on the part of the Prime Contractor or its subcontractor, the Town's Public Works Department make said repairs and send a statement to the RDS HOA requesting payment thereof within 30 days.
10. Entire Agreement. This Agreement contains the entire understanding among the Parties and supersedes, as of the Effective Date, any prior understandings, agreements, or representations, written or oral, of the Parties with regard to the subject matter of this Agreement.
11. Counterparts and Facsimile. This Agreement may be executed in separate counterparts and by facsimile or electronic transmission, each of which will be an original and all of which taken together shall constitute one and the same agreement, and any Party hereto may execute this Agreement by signing any such counterpart.
12. Further Assurances; Additional Documents. Each Party shall promptly execute such additional documents, instruments, and other items as the other Party may reasonably request from time to time for the purpose of effectuating this Agreement and work contemplated hereby.
13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this

Agreement is held to be invalid, illegal, or unenforceable under any applicable law or rule, the validity, legality, and enforceability of the other provisions of this Agreement will not be affected or impaired thereby.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, assigns, and personal representatives.

15. Modification, Amendment, Waiver, or Termination. No provision of this Agreement may be modified, amended, waived, or terminated except by an instrument in writing signed by the Parties or by order of a court of competent jurisdiction.

16. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, excluding any choice of law provisions that may direct the application of the laws of another jurisdiction. Further, the Parties acknowledge that this Agreement has been entered into within the State of Utah and that in any dispute arising out of or relating to this Agreement, each of the Parties agrees to submit to the exclusive jurisdiction of the courts of the State of Utah. Each of the Parties further agree that in the event of any such dispute, venue shall be proper only in the Fifth Judicial District Court in and for Washington County, State of Utah.

17. Construction. The Parties agree that this Agreement was fully negotiated, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and this Agreement shall not be interpreted against either Party as the drafter of this Agreement. The Parties agree and acknowledge that they have retained separate legal counsel to review this Agreement and to provide them with legal advice prior to the execution of this Agreement.

18. Section Headings. The section headings used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize, or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no section heading had been used in this Agreement.

19. Attorneys' Fees. In the event of a dispute between the Parties relating to or arising in any way out of this Agreement, the prevailing Party shall be entitled to recover the reasonable attorneys' fees, costs, and other expenses, including expert fees, incurred by such Party, in addition to any other relief to which the prevailing Party may be entitled.

20. Authorization. Any person signing on behalf of the Parties and their affiliated entities and persons warrants that said person is duly and fully authorized to do so.

21. No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the Parties and their respective successors and assigns. No third party shall have any right, benefit, or claim under or in connection with this Agreement.

22. Dispute Resolution. If any dispute arises under this Agreement, the Parties agree to first attempt to resolve the dispute through informal negotiations. If the dispute cannot be resolved

within thirty (30) days from the start of negotiations, the Parties agree to submit the dispute to mediation with a mutually agreed-upon mediator before resorting to litigation.

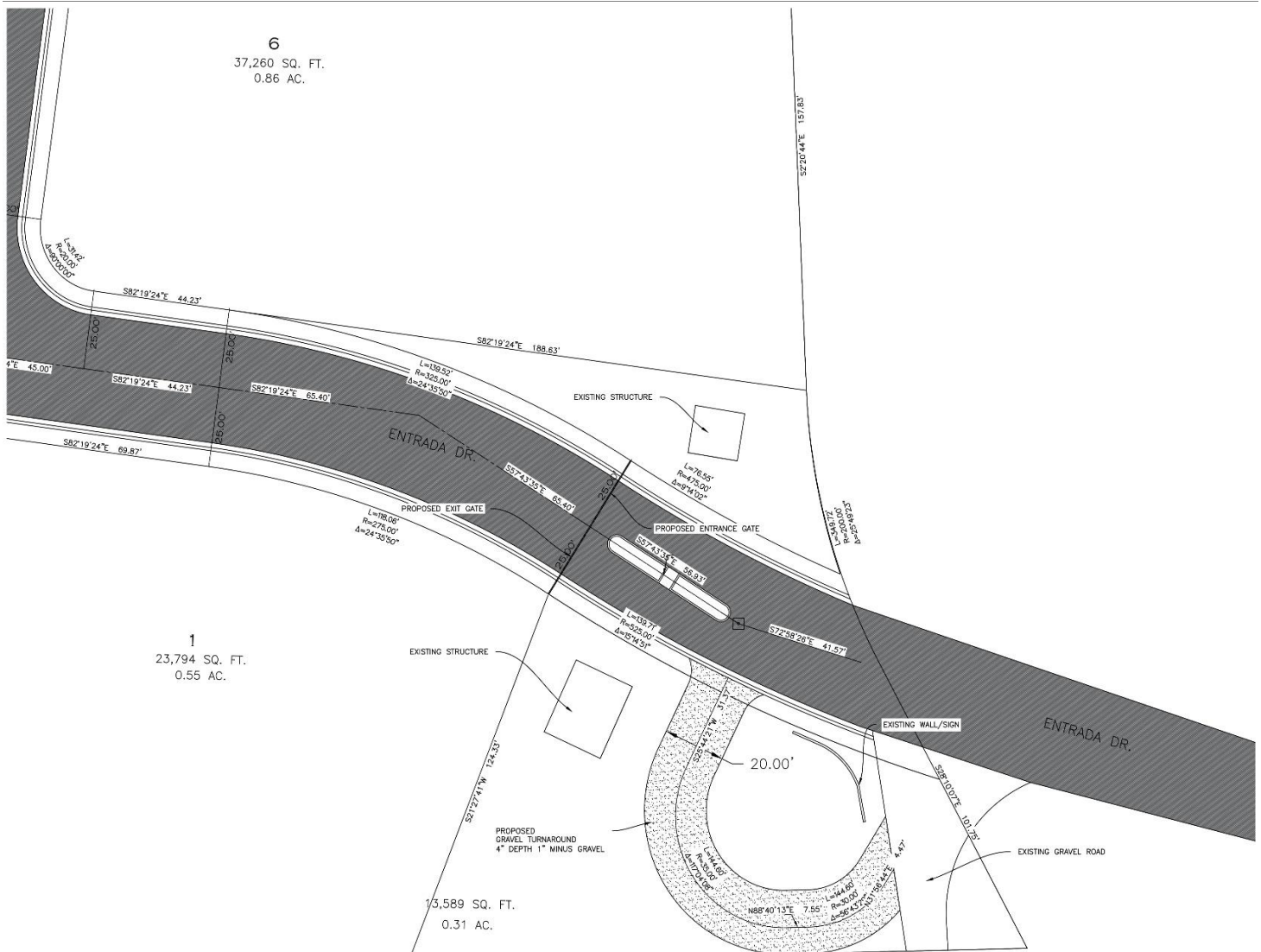
23. Time of the Essence. Time is of the essence in the performance of each and every term, condition, and covenant contained in this Agreement.

*(Signature Page to Follow)*

SO EXECUTED that first date set forth above.

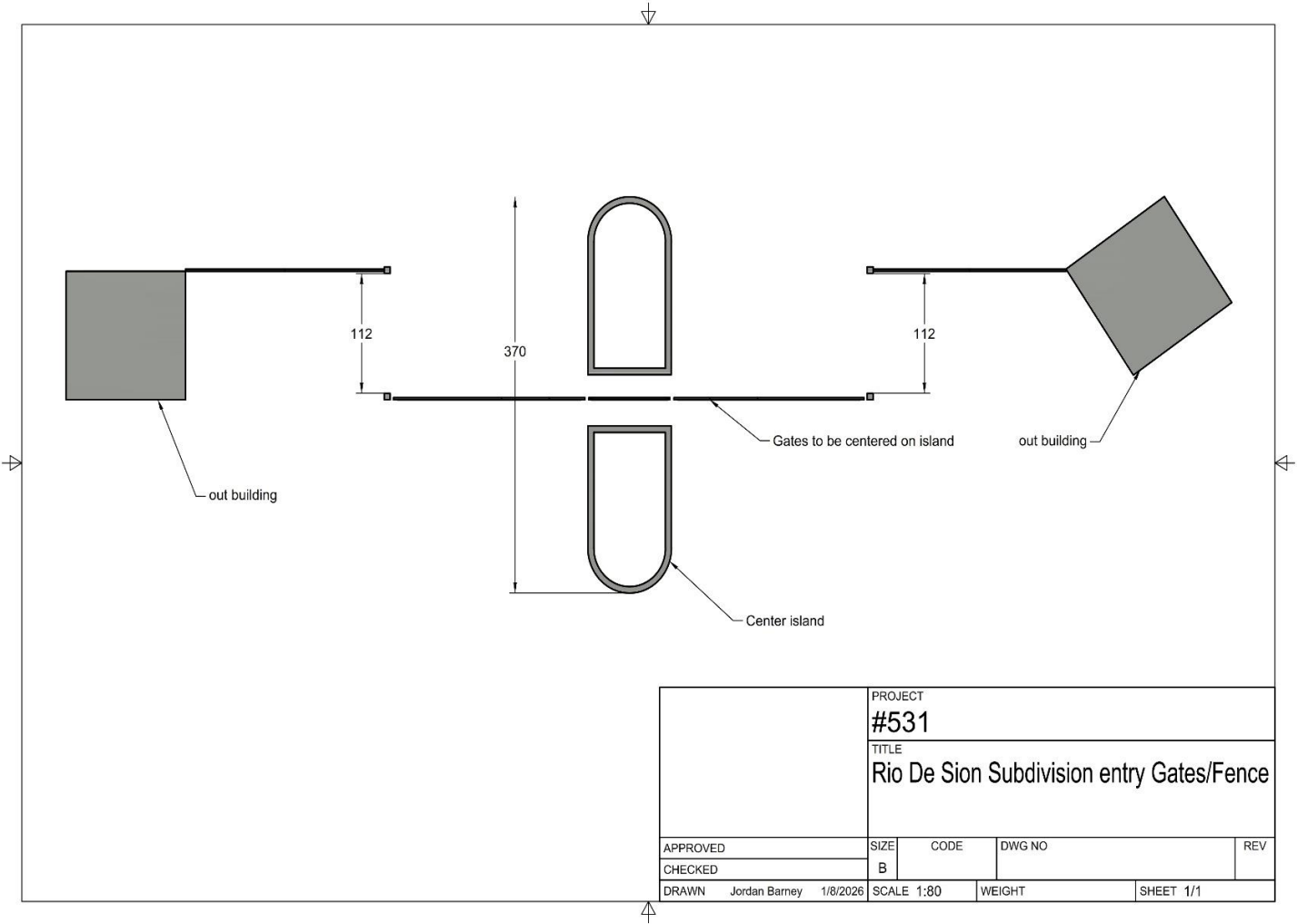
<b>TOWN:</b>  VIRGIN TOWN a Utah municipal corporation  <hr/> Jean Krause, Mayor	<b>RDS HOA:</b>  RIO DE SION HOMEOWNERS ASSOC. a Utah non-profit corporation  <hr/> <hr/> _____ (print name) _____ (title)
Attest:  <hr/> Krystal Percival, Town Recorder	

(Site Plan)





**EXHIBIT “B”**  
**TO GATE IMPROVEMENT & ENCROACHMENT AGREEMENT**  
**(Gate Improvements - Overhead)**



**EXHIBIT "C"**  
**TO GATE IMPROVEMENT & ENCROACHMENT AGREEMENT**  
 (Gate Improvements - Profile)

