

**VIRGIN TOWN  
ORDINANCE # 2018-34**

AN ORDINANCE RESTATING CHAPTER NINE – DIVISION OF LAND OF THE VIRGIN UNIFORM LAND USE ORDINANCES (“VULU”).

**RECITALS**

**WHEREAS**, Virgin Town (“Town”) is a municipal corporation duly organized and existing under the laws of the State of Utah, particularly Title 10 of the Utah Code.

**WHEREAS**, Virgin Town Council (“Town Council”) is both the Town’s governing body and Land Use Authority pursuant to Utah Code § 10-9a- 101 et seq.

**WHEREAS**, Utah Code provides for the adoption and amendment of Town land use ordinances by the Land Use Authority, which in Virgin is the “Town Council with recommendation by the Planning and Zoning Commission” ; and

**WHEREAS**, the Virgin Land Use Authority finds that the existing Virgin Town Code (VULU) Chapter 9 Division of Land, and the various sub sections found within, require updating to meet the changing needs of the town; and

**WHEREAS**, the Virgin Land Use Authority finds that, to accommodate the towns desire to replace and restate the Division of Land requirements within town boundaries; and

**WHEREAS**, the Virgin Town Planning and Zoning Commission held properly noticed Public Hearings on these amendments on November 14, 2018, and voted to recommend its draft amendment ordinance to the Virgin Town Council at a regular meeting on \_\_\_\_\_;

**NOW, THEREFORE BE IT ORDAINED** by the Land Use Authority of Virgin, Utah acting by and through the Town Council that, in order to provide for the health, safety and general welfare of the citizens of Virgin, Utah, the VULU Ordinance is hereby amended to incorporate the following changes:

**ORDINANCE**

**CHAPTER 9: DIVISION OF LAND**

**9.1. GENERAL PROVISIONS.**

**9.1.1 TITLE.**

These regulations shall officially be known, cited, and referred to as the Subdivision Ordinance of Virgin Town, Utah.

**9.1.2. STATUTORY AUTHORIZATION.**

This ordinance is adopted pursuant to the authority granted by the State of Utah.

9.1.2.A. The Land Use Authority Planning & Zoning Commission of the Town of Virgin is hereby designated as the Advisory Agency for subdivisions and shall have all powers and duties with respect to the preliminary plats thereof, and the procedures relating thereto which are specified in this ordinance.

**9.1.3. JURISDICTION.**

Jurisdiction of this ordinance shall include all lands within the extraterritorial jurisdiction of the Town, and within the corporate limits of the Town.

**9.1.4. PURPOSES.**

This ordinance is adopted for the following purposes:

- 9.1.4.A. to adopt subdivision regulations for the divisions of land within the Town of Virgin;
- 9.1.4.B. to guide the future growth and development of the community consistent with Virgin Town Standards and General Plan;
- 9.1.4.C. to encourage preservation of open space, scenic views, sensitive natural resources, significant archaeological sites, and historic buildings;
- 9.1.4.D. to provide for a diversity of lot sizes, housing choices and building densities;
- 9.1.4.E. to provide buffering between new development and existing uses;
- 9.1.4.F. to preserve natural drainage systems and ensure adequate present and future rain and flood water drainage; and
- 9.1.4.G. to protect the purity of waterways and watersheds; and
- 9.1.4.H. to promote the development of a connective trail system throughout the Town and the region.

**9.1.5. WATER AVAILABILITY.**

Municipal water availability must be established prior to the creation of any new buildable lot.

**9.1.6. APPLICABILITY AND COMPLIANCE.**

Subdivision standards set forth in this chapter do not necessarily apply to partitions, joiners, adjustments and divisions that do not qualify as subdivisions under Utah Code and the Virgin Uniform Land Use ordinance (VULU). (See 9.2 DEFINITIONS section for a further description of what is and is not considered a subdivision.)

- 9.1.6.A. The standards of this ordinance apply to all subdivisions. The number of new parcels that can be created shall be consistent with the applicable zoning ordinance for the parent parcel.
  - 9.1.6.A.i. The overall development density for the parent parcel is the same as would be allowed in the existing zoning district except for those conservation subdivisions which qualify for a development bonus under VULU Chapter 9.6.4.
- 9.1.6.B. 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.
- 9.1.6.C. 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.

**9.1.7. ABROGATION AND GREATER RESTRICTIONS.**

**9.1.7.A. 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.

9.1.7.A.i Any provision which impose a higher standards shall control.

#### **9.1.7.B. 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.

9.1.7.B.i 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.

#### **9.1.8. SEPARABILITY.**

If any part or provision of these regulations or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered. It shall not affect or impair the validity of the remainder of these regulations or the application of them to other persons or circumstances. The Virgin Town Council hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid.

#### **9.1.9 ENFORCEMENT, VIOLATIONS, PENALTIES.**

##### **9.1.9.A. VIOLATIONS.**

9.1.9.A.i. It shall be unlawful to build upon, divide, convey, record, or monument any land in violation of this ordinance or state law, and

9.1.9.A.ii. No person shall be issued a building permit until the requirements of this chapter have been fully met.

##### **9.1.9.B. PENALTIES.**

Penalties for violation of this ordinance shall be as follows:

9.1.9.B.i. Any person who fails to comply with this chapter shall, upon conviction, be subject to the penalties as provided by the Town.

##### **9.1.10. APPEALS. (See VULU Chapter 3)**

##### **9.1.11.FEES.**

The Virgin Town Council may, by resolution, establish reasonable fees for the administration of this ordinance. Subdivider shall reimburse the Town for all professional advisors consulted by the Town in consideration of the project, including engineers, attorneys, planners, and other experts.

#### **9.2. DEFINITIONS. (See VULU Chapter 1)**

**9.2.1. Subdivision.** Any land that is divided, re-subdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms and conditions. "subdivision" includes: (See 9.4 below for applicable procedure)

9.2.1.A. the subdivision of land for all non-residential uses; that is, commercial/industrial purposes;

9.2.1.B. the subdivision or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat or other recorded instrument.

9.2.2. Subdivision" **does not** include: (See 9.3.2 Below for applicable procedure)

**9.2.2.A. Joining of Agricultural land.**

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;

**9.2.2.B. Mutual Boundary adjustment.**

A recorded agreement between owners of adjoining subdivided or un-subdivided properties adjusting their mutual boundary if:

9.2.2.B.i. no new lot is created; and

9.2.2.B.ii. the adjustment does not violate applicable land use ordinances;

**9.2.2.C. Recorded document by owner.**

A recorded document, executed by the owner of record:

9.2.2.C.i. Revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

9.2.2.C.ii. joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

**9.2.2.D. Partition of land for future development approvals.**

A bona fide division or partition of land by deed or other instrument where the land use authority expressly approved in writing the division in anticipation of further land use approvals on the parcel or parcels.

9.2.2.E. transfers of interests in land by will or pursuant to court order;

9.2.2.F. cemetery plats.

**9.2.3. Subdivision Waiver (Division of Land Waiver).** (See 9.3.3 below for applicable procedure)

The waiver of the preliminary and Final plat requirements of a division of land up to and including four (4) lots, which:

**9.2.3.A** is not traversed by the mapped lines of a proposed street or a street to be widened as shown in the general plan and does not require the dedication of any land for street or other public purposes;

**9.2.3.B** has been approved by the culinary water authority and the sanitary sewer authority;

**9.2.3.C** is located in an appropriately zoned area;

**9.2.3.D** conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance; and

**9.2.3.E.** no lot or parcel to be divided is the result of a subdivision completed less than three (3) years earlier.

**9.3. APPLICATION, REVIEW, AND APPROVAL PROCESSES.**

**9.3.1. INITIAL CONSIDERATIONS AND TOWN STAFF REVIEW .**

Before submitting any preliminary plat of a subdivision, the subdivider shall meet with the Town Clerk, who may schedule an appointment with the Zoning Administrator to discuss the process and procedure for approval of a subdivision, including any requirements and design standards. It will be determined at this stage which subdivision definition fits and what procedures should be followed for approvals.

### **9.3.2 BOUNDARY ADJUSTMENT REVIEW PROCESS.**

9.3.2.A. Any adjustment to a boundary between two parcels which does not qualify as a subdivision shall be reviewed by the Virgin Town Zoning Administrator for compliance with VULU ordinances, and approved or denied by the Planning and Zoning Commission.

9.3.2.B. Application for a boundary adjustment that needs to come before the Land Use Authority shall be submitted at least ten (10) days prior to a regular Planning and Zoning Commission meeting at which it may be heard, and accompanied by a concept plan which includes:

- 9.3.1.B.i. parcel sizes,
- 9.3.1.B.ii. current ownership of each parcel and all contiguous parcels,
- 9.3.1.B.iii. current zoning of each parcel and all contiguous parcels,
- 9.3.1.B.iv. any agreement to be recorded.

### **9.3.3. SUBDIVISION (DIVISION OF LAND) WAIVER PROCESS.**

9.3.3.A. After initial review of the proposed subdivision by Town staff and the Zoning Administrator, the subdivider will provide a concept plan for further review by the Fire District, Town Engineer, and the Town Attorney. The concept plan shall include:

- 9.3.3.A.i. Parcel and new lot sizes,
- 9.3.3.A.ii. current ownership of each parcel and all contiguous parcels,
- 9.3.3.A.iii. current zoning,
- 9.3.3.A.iv. any agreement to be recorded
- 9.3.3.A.v. Any variances required
- 9.3.3.A.vi. Anything suggested during the initial review stage to help clarify the need for a subdivision waiver to the Land Use Authority.

9.3.3.B. The Planning Commission may recommend and the Town Council may waive the requirements for preparation and approval of preliminary and final plats at a public meeting if it can be shown that:

- 9.3.3.B.i. the municipality has provided proper notice of the public hearing as required in State law; See 9.4.1.A Public Hearing requirements below.
- 9.3.3.B.ii the proposed subdivision meets the definition of Subdivision Plat Waiver as seen in 9.2.3: and
- 9.3.3.B.iii. All private streets shall comply with adopted Fire Codes; and
- 9.3.3.B.iv. Each of the lots meets the frontage, width, and area requirements of the zone district in which it is located, or must have been granted a variance from such requirements by the appeal authority.

9.3.3.C. The Land Use Authority may require as part of the approval any improvements and/or public facility and/or utility easements that are required to ensure the new development complies with Town standards.

9.3.3.D. Upon approval of a subdivision waiver, the Land Use Authority shall certify in writing that the requirements listed in this section have been met, and that the municipality has provided notice as required by law.

**9.4. PRELIMINARY PLAT.**

The subdivider or subdivider’s agent may file an application for review of a preliminary plat.

**9.4.1. PROCEDURE.**

Upon receipt of a preliminary plat review application, staff shall provide copies of the preliminary plat to the Planning and Zoning Commission, the Town Council, and the appropriate utilities for their review and comment. The Virgin Town staff and utility comments will be forwarded to the Planning and Zoning Commission and Town Council for consideration during the review process.

**9.4.1.A. Public Hearing.**

The Planning and Zoning Commission shall hold a public hearing on the proposed subdivision before review and approval of the preliminary plat.

9.4.1.A.i. Notice for the public hearing will be given by:

9.4.1.A.i.a. listing it as an agenda item in the Planning Commission meeting

9.4.1.A.i.b. notice posted locally,

9.4.1.A.i.c. published in the local newspaper, and

9.4.1.A.i.d. Property owners within 300 feet of the proposed land division shall receive written notice of the public hearing, with stamped envelopes provided by applicant.

9.4.1.A.ii. The hearing notice shall include:

9.4.1.A.ii.a. the name of the applicant,

9.4.1.A.ii.b. the address of the property in question, and

9.4.1.A.ii.c. the requested action.

**9.4.1.B. Planning Commission- Recommendation.**

9.4.1.B.i Review and Consideration of Plat.

Before consideration of recommendation, the Planning & Zoning Commission shall:

9.4.1.B.i.a. make the determination that submissions for preliminary plat are complete;

9.4.1.B.i.b. make any appropriate changes for compliance with Town zoning standards;

9.4.1.B.i.c determine the kind and extent of public improvements required;

9.4.1.B.i.d. if the Commission determines that development activity for the project will substantially disturb the site, a bond to ensure reclamation of the land in the event the project is not completed shall be included in the conditions of approval.

9.4.1.B.ii. Recommendation of Approval or Denial of Plat.

The Planning Commission shall recommend or conditionally recommend to the Virgin Town Council disapproval or approval of the preliminary plat.

9.4.1.B.ii.a. The Planning Commission shall make its recommendation and comments in writing to forward to the Town Council, along with comments from the public hearing.

**9.4.1.C. Town Council- Action.**

9.4.1.C.i. Review and Consideration of Plat.

After receipt of the Planning Commission recommendation, and at the subdivider’s request, the Town Council shall place preliminary plat review on the agenda of a regularly scheduled Town Council meeting

within 45 days of recommendation from the Planning and Zoning Commission. At that meeting the Council shall:

9.4.1.C.i.a. make the determination that submissions are complete,

9.4.1.C.i.b. Determine if conditions imposed by the Planning Commission have been met,

9.4.1.C.i.c. review the preliminary plat together with public comments and all recommendations received from the Planning and Zoning Commission, Town Engineer and utility companies,.

9.4.1.C.i.d. If the Council determines that development activity for the project will substantially disturb the site, a bond to ensure reclamation of the land in the event the project is not completed shall be included in the conditions of approval.

9.4.1.C.ii. Approval or Rejection of Plat.

The Town Council may approve, approve with modifications, approve conditionally, or reject the plat and shall state, in writing, conditions or modifications required for approval or reasons for rejection.

9.4.1.C.ii.a. If the preliminary plat is approved, the Town shall return to the subdivider, or their designated representative, the preliminary plat, with a written report of findings.

9.4.1.C.ii.b. The receipt of a copy of the approved preliminary plat, signed by the Mayor signifying Town Council approval, shall authorize the subdivider to proceed with the preparation of the final plat.

**9.4.1.D. Effect of Approval.**

The preliminary plat shall be deemed an expression of approval or conditional approval of the layout submitted as a guide to the preparation of the final plat, which will be subject to further consideration by the Planning and Zoning Commission and the Town Council, at the time of its submission.

9.4.1.D.i. Approval or conditional approval of a preliminary plat shall not constitute automatic approval of the final plat.

9.4.1.D.ii. Approval of a preliminary plat shall be valid for six months from the date of approval.

**9.4.1.E. Amendment to Preliminary Plat.**

If the subdivider desires to amend the preliminary plat as approved, the subdivider may re-submit the amended plat, which shall follow the same procedure, except for the fee, unless the amendment is, in the opinion of the Planning and Zoning Commission or land use authority, of such scope as to constitute a new plat, in which case it shall be re-filed.

**9.4.2. PRELIMINARY PLAT SUBMISSION REQUIREMENTS.**

The preliminary plat shall be prepared by a licensed land surveyor or Engineer at a convenient scale not less than one inch (1") equals one hundred feet (100'). More than one (1) sheet may be used to present the information required in this section. Certain items below may be brought forward from previous submissions.

9.4.2.A. The subdivider shall file all submissions, including draft CC&R's and three (3) hard copies of the plat and a digital version in a usable format by the Town, a minimum of ten (10) days before the meeting at which preliminary recommendation or approval is to be considered.

**9.4.2.A. Plat Requirements.**

The preliminary plat shall include the following:

9.4.2.A.i. Map Essentials.

- 9.4.2.A.i.a. Name of the Proposed Subdivision. The proposed name of the subdivision is subject to approval by the Planning and Zoning Commission and shall not duplicate or be alike in pronunciation of the name of any plat previously recorded in the County.
- 9.10.2.A.i.b. Total acreage of the proposed site.
- 9.4.2.A.i.c. Name, address, and telephone number of the legal owner and, if applicable, agent(s) of the property.
- 9.4.2.A.i.d. Name, address, and telephone number of the professional person(s) responsible for subdivision design, for the design of public improvements, and for surveys.
- 9.4.2.A.i.e. Date of preparation.
- 9.4.2.A.i.f. Graphic scale, map legend, and north arrow.
- 9.4.2.A.i.g. Topographic data including contours at vertical intervals of 1 foot.. Elevation values shall be based on the National Geodetic Vertical Datum of 1929 (NGVD 29) or the North American Datum of 1988 (NAVD 88) or future adjustments to NAVD 88 as defined by the National Geodetic Survey and should also be so noted on the plat.
- 9.4.2.A.ii. Existing Conditions.
- 9.4.2.A.ii.a. Location, width, and names of all existing platted streets and rights-of-way to a distance of one hundred feet (100') beyond the site.
- 9.4.2.A.ii.b. Type, width and condition of street improvements; major utility rights- of-way; parks and other public open spaces; location and widths of existing recreation trails; and permanent buildings and structures to a distance of one hundred feet (100') beyond the site, if any.
- 9.4.2.A.ii.c. Location, widths, and names of all existing public and private easements to a distance of one hundred feet (100') beyond the site.
- 9.4.2.A.ii.d. Names and ownership boundary lines of all adjoining lands within one hundred feet (100') of the land proposed for division.
- 9.4.2.A.ii.e. Significant natural resource features on the site, i.e. wetlands, floodplains, water-courses, existing wooded areas, steep slopes, drainage ways, known threatened and endangered species, and other natural resource features, views, and other prominent visual features.
- 9.4.2.A.ii.f. Burial sites categorized under Indian mounds, national and state register listed properties, and locally designated historic properties.
- 9.4.2.A.ii.g. Existing soil classifications.
- 9.4.2.A.ii.h. Legal description of the property.
- 9.4.2.A.ii.i. Existing zoning classifications for land in and abutting the subdivision.
- 9.4.2.A.iii. Proposed Improvements.
- 9.10.2.A.iii.a Boundary line of the proposed site and all property to be subdivided, to include all contiguous land owned or controlled by the subdivider.
- 9.10.2.A.iii.b. Layout of proposed streets, showing right-of-way widths, types of improvements, street surface widths, and proposed street names.
- 9.10.2.A.iii.c. Locations and type of proposed public easements (i.e. drainage, utility, pedestrian, public access to waterways, etc.); and all conservation easements.
- 9.10.2.A.iii.d. Layout of proposed blocks and lots within the plat.
- 9.10.2.A.iii.e. Basic data regarding proposed and existing (if applicable) lots and blocks, including numbers, dimensions, area.
- 9.10.2.A.iii.f. Minimum front, side and rear building setback lines for all lots.
- 9.10.2.A.iii.g. Indication of the use of any lot.

9.10.2.A.iii.h. Location and size of all proposed and existing sanitary sewer lines and water mains, proposed community sewer and water system, or individual on-site septic systems and potable water sources approved by the culinary water authority and the sanitary sewer authority;

9.10.2.A.iii.i. Location and size of all proposed and existing drainage facilities, features and areas, and other stormwater facilities within the plat that allow drainage within a distance of one hundred feet (100') beyond the site.

9.10.2.A.iii.j. Development envelopes showing areas for grading, lawns, pavement and buildings.

9.10.2.A.iii.k. Open space areas, other than pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres, and provide information on the conditions, if any, of the dedication or reservation.

9.10.2.A.iii.l. Management plan, if any, for long-term management of any open space areas.

#### **9.4.2.B. Preliminary Construction Plans.**

Provide three (3) sets of the following information on one (1) or more sheets and one digital copy:

9.4.2.B.i. Street Plan and Profile: proposed street centerline profile grades, showing the existing and proposed profile grade lines;

9.4.2.B.ii. Grading and Erosion Control Plan: a plan showing existing and proposed grades, drainage patterns, and storm water facilities. The plan shall show:

9.4.2.B.ii.a. the location and extent of grading activities in and adjacent to the plat,

9.4.2.B.ii.b. overall area of the site in acres,

9.4.2.B.ii.c. total impervious surface area of project,

9.4.2.B.ii.d. total pervious area,

9.4.2.B.ii.e. stockpile locations,

9.4.2.B.ii.f. erosion and sediment control facilities, and

9.4.2.B.ii.g. a schedule for erosion and sediment control practices including site specific requirements to prevent erosion at the source.

9.4.2.B.ii.h. Major trees to be preserved, shall be shown on the preliminary grading and erosion control plan.

9.4.2.B.ii.i. Adequate measures for protecting major trees shall be shown on the plan; and

9.4.2.B.iii. Water Management Plan: Provisions for sewage disposal, water supply, stormwater management, and flood control.

#### **9.4.2.C. STUDIES.**

The following studies, to be done by certified experts, may be requested by the Planning Commission, for subdivisions of five (5) lots or more:

9.4.2.C. traffic study;

9.4.2.C.ii. fiscal impact study;

9.4.2.C.iii. wastewater study; and

9.4.2.C.iv. storm water or drainage study.

## **9.5. FINAL PLAT.**

The final drawing of the subdivision and dedication prepared for filing for record with the county recorder and in compliance with all the requirements set forth in the ordinance.

### **9.5.1. FINAL PLAT REVIEW APPLICATION.**

The final plat and all information and procedures relating thereto shall in all respects be in compliance with the provisions of this ordinance and applicable state and federal laws.

9.5.1.A. The subdivider or subdivider's agent may file an application for review of a final plat.

9.5.1.B. The subdivider shall prepare a final plat and an application in accordance with this ordinance, no later than six (6) months after the date of approval of the preliminary plat, pay the required fee, and file four (4) copies of the plat and the application with the Town Clerk at least ten (10) days prior to the meeting of the Planning and Zoning Commission at which action is desired.

9.5.1.C. No application shall be forwarded or be scheduled for hearing before the Planning and Zoning Commission until all required fees are paid and a written report of the Town Engineer's review of the final plat has been submitted.

9.5.1.D. The developer shall provide the following copies of the final plat with the application:

9.5.1.D.i. three (3) hard copies for staff, commission, and Council review;

9.5.1.D.ii. one digital copy in an appropriate format for review and distribution; and

9.5.1.D.iii. one (1) copy each may be requested for any appropriate utilities and Utah state departments per UCA 10-9a-603 for their review and comment.

9.5.1.E. Comments from Virgin Town staff, engineer, attorney, and other departments will be forwarded to the Planning and Zoning Commission and the Town Council for their consideration during the review process.

### **9.5.2. Town Engineer Review.**

9.5.2.A. Pre-approval Review: The Town Engineer shall review and recommend approval of the final plat if he finds that the subdivision fully complies with the improvements required by the ordinance and other stipulations the Town may have required, that the survey description is correct, and that the easements are appropriately located.

9.5.2.B. Post-approval Review: The Town Engineer shall make a final review of the final plat and engineering drawings after it is approved and prior to signing of required signatures on the Mylar copy of the final plat.

9.5.2.C. The Engineer shall then forward the plat to the Town Attorney for his final review. The plat shall not be returned to the subdivider after the Engineer has made his final review.

### **9.5.3 Planning and Zoning Commission Final Plat Review.**

9.5.3.A. The planning Commission shall recommend the final plat for approval to the Virgin Town Council if it finds that:

9.5.3.A.i the final plat conforms to the approved preliminary plat and any conditions of its approval,

9.5.3.A.ii. the subdivision complies with the physical development standards of this ordinance, the zoning ordinance, the general plan, the laws of the State of Utah and the rules and regulations promulgated pursuant thereto,

9.5.3.A.iii. the subdivision will have adequate fire protection,

9.5.3.A.iv. it will have a sufficient supply of culinary water,

9.5.3.A.v. it will not decrease the pressure in the culinary water system at any point in the Town to less than forty (40) psi,

9.5.3.A.vi. it will not unduly congest traffic, and

9.5.3.A.vii. it will not create unreasonable potential for flooding.

9.5.3.B. The Planning and Zoning Commission shall, within 45 days of filing of the final plat with the Town Clerk, recommend approval, conditional approval, or rejection of the plat and shall transmit the final plat and application along with its recommendations to the Town Council.

9.5.3.B.i. The Planning and Zoning Commission may hold the matter in abeyance if there is incomplete or inadequate information.

#### **9.5.4. Town Council Final Plat Review.**

9.5.4.A. The Town Council shall, within no more than 45 days, after the recommendation from the planning commission, of the final plat, place the final plat review on the agenda of a scheduled meeting.

9.5.4.A.i. The Town Clerk shall, when Town Council is to consider approval of a final plat, give at least ten (10) days prior written notice of its intention to the town clerk of any municipality within 1,000 feet of the final plat.

9.5.4.A.ii. If the town clerk fails to act within sixty (60) days, without a time extension and no unsatisfied objections having been filed, the plat shall be deemed uncontested by the neighboring municipality.

9.5.4.B. All signatures (except those of the Town Engineer, Town Council, Town Attorney, and County Recorder) shall appear on the final plat prior to submitting said plat to the Town Council for final approval.

9.5.4.C. The Town Council shall approve the final plat if it finds that:

9.5.4.C.i. all other persons required to approve the plat have given their approval;

9.5.4.C.ii. that the final plat meets all of the requirements of the Town's ordinances;

9.5.4.C.iii. that it does not violate any state laws or rules and regulations promulgated pursuant thereto;

9.5.4.C.iv. that the bonds or escrow deposits are fully in effect, and

9.5.4.C.v. that all fees and assessments have been fully paid.

9.5.4.D. If the plat is rejected, the reasons shall be stated in the minutes of the meeting and a written statement of the reasons forwarded to the subdivider.

9.5.4.E. If approved, subdivider will create a Mylar copy to circulate for the appropriate final signatures.

9.5.4.F. After appearance before the Town Council and approval of the final plat for recordation, as well as payment of all engineering, attorney and other fees required by this ordinance, the Town Attorney shall record the final plat.

#### **9.5.5. Final Attorney Review.**

9.5.5.A. The Town Attorney shall approve the final plat if he finds that:

9.5.5.A.i. there is a current title opinion from a licensed title company showing that the person dedicating the property described on the final plat is the title owner as shown on the records of the County Recorder;

9.5.5.A.ii. that all lien holders have signed mortgage contracts, that the bond, escrow, letter of credit, or trust deed or deposit with the Town is in appropriate form and signed by the necessary parties to the bond, letter of credit or trust deed;

9.5.5.A.iii. that the subdivider has executed the subdivision agreement required by this ordinance; and

9.5.5.A.iv. that the subdivision and its restrictive covenants do not, in his or her opinion, violate any ordinance of the Town or the laws of the State of Utah or the rules and regulations promulgated pursuant thereto.

9.5.5.A.v. The Town Attorney shall verify that all fees, attorney, engineering fees, Town fees, etc., have been paid.

9.5.5.B. Upon satisfactory review the Town Attorney shall:

9.5.5.B.i. approve the drafting of the Mylar copy and

9.5.5.B.ii. require all signatures to be signed by the appropriate persons, i.e., planning Commission chairman, Town Clerk, Town Mayor, Town Engineer, Town Attorney, and

9.5.5.B.iii. cause that the final plat, along with all conservation easements and deed restrictions, be recorded at the Washington County Recorder's office within thirty (30) days of its approval .

### **9.5.6. START OF CONSTRUCTION..**

When the Town Attorney has acknowledged receipt of a correct Mylar copy of the final plat, complete with all required certificates, subdivider may start construction.

### **9.5.7. FINAL PLAT SUBMISSION REQUIREMENTS.**

A final plat prepared by a registered land surveyor shall be required for all subdivisions. It shall comply with the requirements of the State of Utah and this ordinance. Submissions for final plat approval shall include:

#### **9.5.7.A. FINAL CONSTRUCTION PLANS.**

Simultaneously with the filing of the final plat, the owner shall file with the Town Clerk four (4) copies (3 hard copies and 1 digital) of the final construction plans and specifications of public improvements required by Virgin Town, along with an Engineer's estimate of construction costs. Engineering drawings (complete and detailed construction plans and drawings of improvements) must be prepared, signed and stamped by a licensed Engineer and contain all information as set forth below:

9.5.7.A.i. Drawings and/or prints that are clear, legible, and conform to good engineering and drafting practices. Size of drawings shall be twenty-three inches by thirty-six inches (23"x 36") (trim line) with minimum one-half inch (1/2") borders on top, bottom and right side, and one and one-half inches (1-1/2") minimum border on left side for binding.

9.5.7.A.ii. Each sheet shall indicate a scale for each detail and include a typical title block on the right side (or lower right hand corner) of full sheets, and the lower right hand corner of the plan view on plan and profile sheets, including the name of the subdivision.

9.5.7.A.iii. Typical street cross sections(s) in the form prescribed by the Town.

9.5.7.A.iv. Profiles of all streets, whether existing or proposed, in which improvements will be located. Where subdivision lots with existing curbed and uncurbed streets, a profile of the roadway centerline shall be shown for a distance of 100 feet (each way) beyond the subdivision boundaries.

9.5.7.A.v. Profiles of all sanitary sewers, storm drains, and irrigation lines, and any other features required for clarity or necessary to avoid conflicts between existing and new facilities and structures. Detailed information as to size, type, grade, ring and flow lines, elevations, etc., shall be displayed.

9.5.7.A.vi. When both sides of the street are to be at the same elevation, street centerline only need be profiled (with stationing and clearly indicated elevations); otherwise, profiles of both sides of

the street must be so shown. All curb returns shall be stationed and assigned elevations. Vertical curves in roadway profiles shall show station and elevation at the beginning, end, tangent intersection (both at point of intersection and on the curve), and at even fifty-foot (50') intervals along the curve.

9.5.7.A.vii. Detailed engineering plan views of the above, showing lot lines, site grading, landscaping (including type and location), street improvements, drainage, public utility locations (including valves and hydrants), street lights, and street sign locations (signs to be approved by the Town and installed by the developer), open spaces.

9.5.7.A.viii. Details of any proposed structures, completely dimensioned and described. For standard structures, reference may be made to the appropriate adopted Town Standard drawings.

9.5.7.A.ix. A completed geotechnical report addressing the suitability of all soils as they relate to all public improvements such as but not limited to streets, utility lines, backfill, proposed structures, site grading etc. The report shall include site-specific conditions and recommendations. The report shall include locations, logs and test results of all borings or excavations. The report shall be signed and stamped by a licensed professional in the related field.

#### **9.5.7.B. OTHER SUBMISSIONS.**

The subdivider shall also submit:

9.5.7.B.i. Plans for any areas to be protected and/or planted in native vegetation.

9.5.7.B.ii. Plans required to qualify for density bonuses, if applicable.

9.5.7.B.iii. A copy of the final protective covenants.

9.5.7.B.iv. An agreement that the subdivider will hold the Town harmless for any and all liability which may arise as a result of the improvements which are installed until such time as the Town certifies the improvements at the end of the warranty period.

9.5.7.B.v. Effective bonds or escrow deposits.

#### **9.5.7.C. CERTIFICATION.**

All final plats shall provide all the certificates required by Utah State Statutes, as well as:

9.5.7.C.i. A current certified abstract of title or such other evidence as the Town may require showing ownership or control by the applicant.

9.5.7.C.ii. A registered land surveyor's "Certificate of Survey", and the surveyor's certification that the surveyor has fully complied with all sections of this Chapter.

9.5.7.C.iii. The owner's "Certificate of Dedication" or a "Corporate Certificate" for corporations.

9.5.7.C.iv. A notary public acknowledgement.

9.5.7.C.v. The Town Engineer's "Certificate of Approval" (submit for Planning and Zoning Commission review).

9.5.7.C.vi. The Planning and Zoning Commission's "Certificate of Approval" (submit for Town Council review).

9.5.7.C.vii. The Town Council's "Certificate of Approval" (submit for Attorney review).

9.5.7.C.viii. The Town Attorney's "Certificate of Approval" (submit for recordation).

#### **9.5.7.D. FINAL PLAT REQUIREMENTS.**

The final plat must be prepared by a licensed land surveyor on a standard form, or as modified by the Town Council. The top of the plat shall be either north or east, whichever accommodates the drawing best. The plat shall contain all of the following information set forth accurately on its face:

9.5.7.D.i. The name of the subdivision, which name must be approved by the Planning Commission.

9.5.7.D.ii. Accurately drawn boundaries, showing the proper bearings and dimensions of all boundary lines of the subdivision, properly tied to public survey monuments. These lines should be slightly heavier than street and lot lines. Lot lines shall show dimensions in feet and hundredths.

9.5.7.D.iii. Exact length and bearing of the centerline of all streets. All street centerline data must be shown together with its relationship to the property lines, corners, etc.

9.5.7.D.iv. The accurate location of all monuments shall be shown on the plat, and shall be identified, including all United States, State, County or other official monuments.

9.5.7.D.v. Streets shall be numbered (named streets shall also be numbered) in accordance with the Town's street numbering system.

9.5.7.D.vi. Exact street width along the line of any obliquely intersecting street.

9.5.7.D.vii. Exact location and description of utility and drainage easements.

9.5.7.D.viii. Rights-of-way within and abutting the plat.

9.5.7.D.ix. Consecutively numbered lots throughout the subdivision with no omissions or duplications.

9.5.7.D.x. Accurate outlines and legal descriptions of any areas to be dedicated or reserved for public use, with the purpose indicated thereon, and of any area to be reserved by deed or covenant for common uses of all property owners, including public access to waterways.

9.5.7.D.xi. Restrictions relating to access control along public ways.

9.5.7.D.xii. Setback or building lines.

9.5.7.D.xiii. Survey, mathematical information and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines, including bearing and distance of straight lines, and central angle, radius and arc length of curves, and such information as may be necessary to determine the location of beginning and ending points of curves.

9.5.7.D.xiv. Restrictive covenants, deed restrictions, conservation easements for the proposed subdivision shall be filed with the final plat.

9.5.7.D.xv. The legal instruments detailing the ownership of any common open space, as required in Chapter 9.6.5. 7.2 which shall be filed with the final plat.

9.5.7.D.xvi. The dedication to the public of all proposed public streets and highways included in the project, and location of all monuments.

9.5.7.D.xvii. All final plats shall meet all the surveying and monument requirements of the State of Utah; and

#### **9.5.7.E. State Plane Coordinate System.**

Where the plat is located within a quarter section, the corners of which have been relocated, monumented, and coordinated, the plat shall be tied directly to one of the section or quarter corners so relocated, monumented, and coordinated. The exact grid bearing and distance of such tie shall be determined by field measurements, and the material and state plane coordinates of the monument marking the relocated section or quarter corner to which the plat is tied shall be indicated on the plat.

## **9.6. REQUIREMENTS FOR DESIGN AND IMPROVEMENTS.**

### **9.6.1. 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:

9.6.1.A. 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 Virgin Town ordinances (See VULU chapter 11).

9.6.1.B. All wetlands as defined in federal and Utah State code.

9.6.1.C. All areas having slopes greater than thirty percent (30%).

9.6.1.D. 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.

9.6.1.E. Burial sites and Indian mounds.

9.6.1.F. 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.

9.6.1.G. Areas determined to be environmentally sensitive may be included as common open space in a subdivision but shall not be included in the development Yield Analysis in VULU Chapter 9.6.2. These lands shall be identified as an out-lot or other designation that indicates the land is not available for development.

### **9.6.2. DEVELOPMENT YIELD.**

The number of residential units for a parcel shall be determined in accordance with the following:

9.6.2.A. VULU Chapter 9, development Yield Analysis, shall establish the base development yield for the parcel.

9.6.2.B. The base development yield may be increased if the parcel complies with the Performance Standards for Conservation Subdivisions of this Chapter and development 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%).

9.6.2.B.i. Creating an endowment where the principal would generate sufficient annual interest to cover the conservation easement holder's yearly costs (taxes, insurance, maintenance, enforcement, etc.).

9.6.2.B.ii. Providing for access by the general public to trails, parks, or other recreational facilities, excluding golf courses.

9.6.2.B.iii. 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.

9.6.2.B.iv. Implementing approved professional grazing management plan on open space designed to maintain natural vegetation while reducing noxious plant populations.

9.6.2.B.v. Maintaining an approved agricultural use under a permanent approved professional management plan on open space.

9.6.2.B.vi. Implementing approved permanent, enforceable policies of strict xeriscaping and water conservation throughout the development.

9.6.2.B.vii. Implementing innovative low impact wastewater treatment (requires Town- approved professional plan and specs).

9.6.2.B.viii. Implementing trails improved and connected as preferred by Town.

### **9.6.3. GENERAL PERFORMANCE STANDARDS**

#### **9.6.3.A. Stormwater Management.**

9.6.3.A.i. The development should capture 80% of the sediments/pollutants from the one (1) year storm event.

9.6.3.A.ii. Natural open drainage systems (i.e., washes and dry river beds) should be used or bypassed as recommended by the Town Engineer.

#### **9.6.4. OPEN SPACE DESIGN.**

9.6.4.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.

9.6.4.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:

9.6.4.B.i Parking areas for access to and use of the open space developed at a scale limited to the potential users of the open space, with the recommendation of Planning & Zoning Commission.

9.6.4.B.ii. Privately-held buildings or structures provided they are accessory to the use of the open space.

9.6.4.B.iii. Shared septic systems and shared potable water systems.

9.6.4.B.2.iv. Road rights of way shall not be counted towards the required minimum open space.

9.6.4.B.v. 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.

#### **9.6.4.C. Sewage and Water Facilities.**

Water for a subdivision shall be provided by approved hookups to Virgin Town water supply. All subdivisions shall be provided with adequate waste water treatment systems, either separate, shared, or community, as determined by the Land Use Authority and approved by the Utah State Health Department or Division of Environmental Quality, as applicable, which is the Sanitary Sewer Authority. Where sewage treatment is not provided by a publicly owned wastewater treatment works, a common sewage treatment and disposal unit located on the common open space lands is encouraged.

#### **9.6.4.D. Financial Guarantee.**

A financial guarantee ensuring the construction and completion of the common facilities shall be submitted to the Town Clerk.

## **9.7. OWNERSHIP AND MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES.**

### **9.7.1. ALTERNATIVES.**

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

- 9.7.1.A. A homeowners' association;
- 9.7.1.B. a condominium association established in accordance with the laws of the State Of Utah;
- 9.7.1.C. a nonprofit conservation organization;
- 9.7.1.D. the Town of Virgin or another governmental body empowered to hold an interest in real property; or
- 9.7.1.E. an individual who will use the land for open space purposes as provided by a conservation easement.

### **9.7.2. HOMEOWNERS' ASSOCIATION.**

9.7.2.A. A homeowners association shall be established if the common open space is proposed to be owned by a homeowners association.

9.7.2.B. 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:

- 9.7.2.B.i. The legal description of the common land;
- 9.7.2.B.ii. a description of common facilities;
- 9.7.2.B.iii. the restrictions placed upon the use and enjoyment of the lands or facilities;
- 9.7.2.B.iv. persons or entities entitled to enforce the restrictions;
- 9.7.2.B.v. 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;
- 9.7.2.B.vi. a mechanism for resolving disputes among the owners or association members;
- 9.7.2.B.vii. the conditions and timing of the transfer of ownership and control of land facilities to the association;
- 9.7.2.B.viii. language requiring that any termination of or amendment to the homeowners' association bylaws, or to the declaration of covenants, conditions and restrictions of the homeowners association, will not take effect unless approved by the Virgin Land Use Authority; and
- 9.7.2.B.ix. any other matter the developer deems appropriate.

### **9.7.3. 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".

#### **9.7.4. 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 of Virgin. 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.

#### **9.7.5. PUBLIC DEDICATION OF OPEN SPACE AND STREETS.**

The Town of Virgin 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:

9.7.5.A. The common open space is accessible to the residents of the Town of Virgin.

9.7.5.B. The Town of Virgin agrees to and has access to maintain the common open space.

9.7.5.C. Streets or other public ways which have been designated on a duly adopted official map or element of the Virgin Town General Plan shall be dedicated or reserved by the sub divider to the Town of Virgin. 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.

#### **9.7.6. 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.

#### **9.7.7. 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.

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

9.7.7.A.i. designate the ownership of the open space and common facilities in accordance with Chapter 9.7.;

9.7.7.A.ii. establish necessary regular and periodic operation and maintenance responsibilities;

9.7.7.A.iii. estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an ongoing basis; and

9.7.7.A.iv. 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 9.6, describing:

9.7.7.A.v.a. Existing conditions including all natural, cultural, historic, and scenic elements in the landscape;

9.7.7.A.v.b. the proposed end state for each common open space area; and the measures proposed for achieving the end state;

9.7.7.A.v.c. 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

9.7.7.A.v.d. the operations needed for maintaining the stability of the resources, including: mowing schedules; weed control; planting schedules; clearing and cleanup.

9.7.7.A.v.d.1 At Virgin Town's discretion, the applicant may be required to place in trust sufficient funds to provide maintenance and operation of common facilities in perpetuity.

9.7.7.B. 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.

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

9.7.7.B.ii. 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.

9.7.7.B.ii.a. The Town of Virgin may enter the premises and take corrective action.

9.7.7.B.ii.b. The costs of corrective action by the Virgin Town Council 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.

9.7.7.B.ii.c. The Town of Virgin, at the time of entering upon such common facilities for the purpose of maintenance, shall file a notice of such lien in the office of the County Register of Deeds upon the properties affected by such lien.

9.7.7.C. Management plans can be amended by the owner identified under Chapter 9.7.1 with the approval of the Virgin Town Council.

## **9.8. FINANCIAL RESPONSIBILITY FOR ALL SUBDIVISIONS.**

### **9.8.1. GUARANTEE.**

The subdivider shall warrant and guarantee that the improvements provided for herein, and every part thereof, will remain in good condition for a period of two (2) years after the date of conditional acceptance by the Town Council, and agree to make all repairs to and maintain the improvements and every part thereof in good condition during the two (2) year period at no cost to the Town.

9.8.1.A. It is further agreed and understood that identifying the necessity for repairs and maintenance of the work rests with the Town Engineer, whose decision upon the matter shall be final and binding upon the subdivider, and the guarantee hereby stipulated shall extend to and include, but shall not be limited to, the entire street, subgrade, base, surface, all pipes, joints, valves, backfill and compaction, the working surface, curbs, gutters, sidewalks, and the other accessories that are or may be affected by the construction operations.

9.8.1.A.i. Whenever, in the judgment of the Town Engineer, said work shall be in need of repairs, maintenance, rebuilding, the subdivider shall be notified in writing.

9.8.1.A.ii. 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 subdivider.

9.8.1.B. Prior to final approval of a subdivision, the sub divider shall execute and acknowledge, in a form capable of being recorded in the office of the County Recorder, a written agreement with the Town Council by which the subdivider covenants that he will not sell, lease or convey any of the subdivided property to anyone whosoever unless he shall first, as a condition precedent thereto, satisfy at least one of the requirements listed below.

9.8.1.B.i. The agreement shall specifically provide that it shall be deemed to be a covenant running with the land to secure the installation of all the improvements required by this ordinance, together with the payment of all costs, including a reasonable attorney's fee,

which the Town Council may incur in enforcing any of the terms and provisions of the agreement.

9.8.1.B.ii. The lien may be released by the Town when the subdivider complies with the requirements set forth in at least one of the following requirements:

9.8.1.B.ii.a. Bond. The subdivider shall furnish and file with the Town Clerk, an acceptable cash- surety bond in an amount equal to the cost of the required improvements, plus twenty-five percent (25%), as estimated by the Town Engineer.

9.8.1.B.ii.a.1. In the event the sub divider 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 proceeds of the collection of the bond to defray the expenses thereof.

9.8.1.B.ii.a.2. The subdivider shall be responsible for the quality of all material and workmanship. At the completion of the work, or not less than ten (10) days prior to the release date of the bond or other approved security, 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.

9.8.1.B.ii.a.3. If all liens are paid, and conditions thereof are found to be satisfactory, the Town Council shall release the bond, less ten percent (10%).

9.8.1.B.ii.a.4. If the conditions of materials or workmanship shows unusual depreciation or does not comply with standards of the Town, or if any outstanding liens are not paid, the Town Council may declare the subdivider in default.

9.8.1.B.ii.a.5. At the end of guarantee period, a final inspection of the improvements shall be made by the Town Engineer, at the conclusion of which ten percent (10%) retainage will be returned to the subdivider, less costs to repair deficiencies found in the inspection. If repair costs are in excess of the retainage, the subdivider shall pay the overage.

9.8.1.B.ii.b. Escrow Deposit. The subdivider shall deposit in escrow, with an escrow holder approved by the Town Council, an amount of money equal to at least 125% of the cost of improvements, as estimated by the Town Engineer, and require a percentage to cover the cost of inflation, under an interest bearing escrow agreement conditioned for the installation of said improvements within two (2) years from the approval of the final plat.

9.8.1.B.ii.b.1. The escrow agreement aforesaid, shall be approved by the Town Council and the Town Attorney, and shall be filed with the County Recorder and shall contain substantially the following language:

**AGREEMENT**

The undersigned hereby promises and warrants that it has in deposit in an escrow account for the benefit of Virgin Town the sum of \$\_\_\_\_\_, which represents at least 125% of the estimated costs of the improvements not accepted by the Town and not constructed or installed by the developer of \_\_\_\_\_ subdivision. The undersigned hereby agrees that the foregoing sum of money shall be use exclusively for the purpose of paying for the costs of materials, and construction and installation of the improvements required by the municipality’s subdivision ordinances. The undersigned further agrees that the money held in an escrow account shall be paid out to the contractors installing and constructing the required improvements only upon an order executed by the sub divider and by an authorized officer of the Town.

The sub divider shall not withdraw from the escrow account any amount in excess of one-hundred percent (100%) of the estimated cost of improvements, but shall pay from other sources any costs for such improvements which exceed one-hundred percent (100%) of the costs estimated by the Engineer.

A sum equal to twenty-five percent (25%) of the estimated costs of improvements shall remain with the escrow holder for a period of two (2) years after all improvements are completed and conditionally accepted.

If after two (2) years, all or any part of the required improvements are not installed, constructed, and maintained according to the standards required in the Town’s subdivision ordinance, the Town shall notify, in writing, the sub divider and the escrow holder of the defects and shall make demand on the sub divider that the defects be corrected. If the defects are not corrected within thirty (30) calendar days, the Town may correct the defects and charge the costs to the escrow holder. The escrow holder shall, on receiving reasonable proof from the Town of the defect, and that the Town had incurred the cost of correcting the defect pay to the Town from the escrow account the cost of correcting the defect, and the escrow holder shall be held harmless by the parties by reason of the payment to the Town.

If, after two (2) years the Town Board has conditionally accepted the improvements required by its subdivision ordinance, the required improvements remain substantially free from latent defects, the Town shall certify such fact to the escrow holder and the escrow holder shall release to the sub divider any money still held in the escrow account, and the escrow holder shall be discharged of its obligations to the Town.

**AUTHORIZED SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**PAYMENT OF ENGINEERING AND ATTORNEY’S FEES**

The Town of Virgin requires that all subdividers agree to pay the out-of-pocket attorney and engineering costs or fees incurred by the Town. These fees are the actual cost for legal and engineering review to ensure that all plats and plans are in compliance with Town standards. These fees shall be paid prior to release of the final plat for recordation. Failure to pay these fees shall cause the approval process to be suspended until such time the fees are paid.

**AGREED TO BY:**

\_\_\_\_\_ **DATE** \_\_\_\_\_ **OWNER/AGENT FOR**  
**SUBDIVIDER**

\_\_\_\_\_ **DATE** \_\_\_\_\_ **NOTARY**

1. Severability. If any section, clause or portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.
2. Conflicts/Repealer. This Ordinance repeals and supersedes the provisions of any prior ordinance in conflict herewith.
3. Effective Date. This Ordinance shall become effective immediately upon adoption by the Virgin Town Council and execution by the Virgin Town Mayor.

ADOPTED AND APPROVED BY THE VIRGIN TOWN COUNCIL ORDINANCE NUMBER 2018-\_\_\_\_ will become effective on this \_\_\_\_ day of \_\_\_\_\_, 2018 based upon the following vote:

Council Member:

Dan Snyder	AYE__	NAE__
LeRoy Thompson	AYE__	NAE__
Kevin Stout	AYE__	NAE__
Jay Lee	AYE__	NAE__
Matthew Spendlove, Mayor	AYE__	NAE__

VIRGIN TOWN  
a Utah municipal corporation

\_\_\_\_\_  
Matthew Spendlove, Mayor

ATTEST:

\_\_\_\_\_  
Monica Bowcutt, Town Clerk