

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

Affects Parcel No. T-47-A-1

## IMPROVEMENT DEFERRAL AGREEMENT

THIS IMPROVEMENT DEFERRAL AGREEMENT (“Deferral Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the TOQUERVILLE CITY, a municipal corporation, (“CITY”) and BEAU J CLIFFORD & TIFFANY ANDREA DRURY, 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 applied for a building permit to construct a single-family residence upon the Property (“Residence”).

WHEREAS, Pursuant to Title 10, Chapter 5, Sections 2 & 3 of the Toquerville City Code (“City Code”), applicants seeking the approval of a building permit (and ultimately a certificate of occupancy) from the City must install curb, gutter and sidewalks and street improvements up to the centerline of any street that abuts or adjoins a lot where the construction of the Residence will occur (“Improvements”).

WHEREAS, Section 2.C. of Title 10, Chapter 5 of the City Code also contemplates that if the installation of the Improvements are not prudent because other lots or areas along the same road or street are not ready for similar Improvements, that a property owner may obtain a certificate of occupancy only if they provide security for the City that Improvements will be completed at a later date at no additional expense 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 its obligations to install the Improvements utilizing a recorded Deferral Agreement and the Toquerville City Council has found that unusual circumstances exist in that the street which adjoins the Property, is not built out sufficiently to determine the proper locations, elevations and dimensions of the Improvements and that their installation would not serve their intended purpose as they would not continue and extend to existing City infrastructure so as to provide safe and continuous vehicular travel surfaces, pedestrian travel surfaces as well as proper drainage, detention and dispersment of storm and surface water in the area.

WHEREAS, as a result of the City's findings of unusual circumstances, the City is willing to allow the Applicant to obtain a building permit, construct the Residence and obtain a Certificate of Occupancy (assuming all building codes and regulations have been complied with) as long as the Applicant executes this Deferral Agreement and authorizes it to be recorded against the Property so as to create a contractual obligation between the Applicant and the City whereby the City will be authorized, at any point in time it deems necessary and reasonable, to have the Improvements installed, it may do so and require the Applicant or successor owners of the Property to pay for the same (or their proportional share if part of a larger project) within 30 days of completion of the Improvements.

### AGREEMENT

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

1. Building Permit. Upon: a) the Applicant's notarized execution of this Deferral Agreement and delivery of the same to the 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 building and site plans in reviewed and found to be in compliance with Title 10, Chapter 6, Section 2 of the Toquerville City Code, the City agrees to issue Applicant a building permit for the Residence, upon the condition that Applicant fulfills all other requirements necessary to obtain a building permit under the laws and ordinances of the City, including the payment of application fees and impact fees.

2. Certificate of Occupancy. So long as Applicant has obtained a building permit, paid all necessary fees and costs, and 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.

3. 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.

4. 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.

5. Additional Terms. The following additional condition(s) must be complied with by Applicant as condition(s) and term(s) of this Agreement:

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6. Default. 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.

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

8. Binding Effect. This Agreement shall be recorded in the Official Records in the Office of the Recorder of Washington County, State of Utah at the Applicant's expense and shall constitute notice to all successors in interest in the 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.

9. 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.

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

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

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

*Signature Pages to Follow*

DATED as of first date set forth above.

**APPLICANT:**

\_\_\_\_\_  
Applicant's Name

\_\_\_\_\_  
Applicant's Name

STATE OF UTAH )

)ss:

COUNTY OF WASHINGTON )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (applicant), being first duly sworn, deposes and says that he has read the foregoing Deferral Agreement and knows the contents thereof and that he signed the said document for its intended purpose.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH )

)ss:

COUNTY OF WASHINGTON )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (applicant), being first duly sworn, deposes and says that she has read the foregoing Deferral Agreement and knows the contents thereof and that she signed the said document for its intended purpose.

\_\_\_\_\_  
NOTARY PUBLIC

**CITY:**

CITY OF TOQUERVILLE  
A Utah Municipal Corporation

**Attest:**

\_\_\_\_\_  
Lynn A Chamberlain, Mayor

\_\_\_\_\_  
Dana McKim, Recorder

STATE OF UTAH                    )  
  )ss:  
COUNTY OF WASHINGTON        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared LYNN A CHAMBERLAIN personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose on behalf of Toquerville City upon authority given him by the Toquerville City Council.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH                    )  
  )ss:  
COUNTY OF WASHINGTON        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared DANA MCKIM personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that she signed it voluntarily for its stated purpose on behalf of Toquerville City by virtue of her appointment as the Toquerville City Recorder.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT "A"**

(Legal Description of Property)

TOQUERVILLE TOWN PLAT A BLK 10 (T) BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 10, TOQUERVILLE TOWNSITE SURVEY, AND RUNNING THENCE SOUTH 78°51'52" WEST ALONG THE BLOCK LINE, 325.77 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 155.32 FEET; THENCE NORTHWESTERLY, TO THE RIGHT, ALONG THE ARC OF SAID CURVE 209.55 FEET, THROUGH A CENTRAL ANGLE OF 77°17'55"; THENCE NORTH 27°09'20" EAST 78.72 FEET; THENCE NORTH 21°27'42" EAST 384.25 FEET; THENCE NORTH 17°13'56" EAST 119.69 FEET; THENCE NORTH 78°51'53" EAST 388.02 FEET; THENCE SOUTH 11°08'08" EAST 361.57 FEET; THENCE SOUTH 77°34'53" WEST 28.60 FEET; THENCE SOUTH 21°47'20" WEST 120.67 FEET; THENCE SOUTH 29°53'18" WEST 196.84 FEET TO THE POINT OF BEGINNING.

*LESS AND EXCEPTING ANY AND ALL WATER RIGHTS ASSOCIATED HEREWITH*

*SUBJECT TO EASEMENTS, RESTRICTIONS AND RIGHTS OF WAY APPEARING OF RECORD OR ENFORCEABLE IN LAW AND EQUITY.*

Parcel No. T-47-A-1