

AFTER RECORDING RETURN TO:

**Millcreek
3330 South 1300 East
Millcreek, Utah 84106**

DEFERRAL AGREEMENT

THIS DEFERRAL AGREEMENT (this “**Agreement**”) is entered into effective January 24, 2020 between **MILLCREEK**, a Utah municipality whose address is 3330 South 1300 East, Millcreek, UT 84106 (“**City**”), and the undersigned owner(s) (“**Owner**”) of the real property described below.

RECITALS:

A. Owner owns legal title to certain real property (the “**Property**”) that is located at 2525 East Neffs Lane and that is more particularly described on exhibit “A” attached hereto and incorporated herein by reference.

B. Owner has requested that City temporarily defer Owner’s obligation to install certain public improvements which are and will remain public property (the “**Improvement**”) that are described on exhibit “B” attached hereto and incorporated herein by reference.

C. City is willing to defer Owner’s obligation to install the Improvements conditioned on Owner’s promise to install the Improvements promptly upon City’s future demand as specified in this Agreement.

D. The parties intend to set forth herein their entire agreement regarding the subject deferral, and to supersede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same.

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Owner’s Acknowledgment.** Owner hereby irrevocably acknowledges its obligation to install the Improvements immediately upon City’s demand as specified in this Agreement.

Section 2. **Grant of Deferral.** City hereby grants to Owner a temporary deferral (the “**Deferral**”) of Owner’s obligation to install the Improvements. City’s grant of the Deferral is conditioned on and subject to Owner’s covenant to, among other things, install the Improvements and if necessary convey associated real property to the City promptly upon City’s written demand and to effect such installation and conveyance at Owner’s sole cost and in strict accordance with City’s specifications, rules, regulations and ordinances in effect at the time of such installation.

Section 3. **Termination of Deferral.** City shall have the absolute, unfettered right to terminate the Deferral at any time prior to January 24, 2030 upon written notice to Owner at the address described below. If City terminates the Deferral, Owner shall commence construction/installation of the Improvements within thirty (30) calendar days after City's written notice of termination of the Deferral or in any event, on or before January 24, 2030, whichever date is earlier, and shall complete such construction/installation within one hundred twenty (120) days after such date.

Section 4. **Termination of Obligation.** City shall have the absolute, unfettered right to terminate the Owner's obligation to install the Improvements. City shall notify Owner in writing at the address described below if it terminates Owner's obligation to install the Improvements. If City terminates the Owner's obligation to install the Improvements, this Agreement shall be null and void.

Section 5. **Owner's Default.** If Owner fails to install the Improvements as required herein, then City shall have the option, but not the obligation, to install the Improvements on Owner's behalf. Immediately upon City's submission of an invoice to Owner, Owner shall reimburse City for any and all costs incurred by City to so install the Improvements including attorneys' fees plus an additional fifteen percent (15%) thereon to cover City's increased overhead attributable to Owner's default hereunder. Interest shall accrue on the invoiced amount at the rate of eighteen percent (18%) per annum. **The invoiced amount, together with interest thereon, shall constitute a continuing lien on and encumbrance against the Property and the City shall have the continuing right, at its option, to commence an action to foreclose such lien in the manner then specified for foreclosure of mortgages under then-current Utah state law. Owner shall be liable for payment of any deficiency remaining following such foreclosure.** Even though all the obligations of Owners and successor Owners under this Agreement shall be joint and several obligations of each party the City will attempt to allocate the liability equally to all Owner of Property.

In addition to the right of foreclosure specified above, upon Owner's default hereunder City also may seek any and all other legal and/or equitable remedies available against Owner.

Section 6. **Covenants Run With Land.** Owner's obligations under this Agreement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land constituting the Property; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon (i) City and its successors and assigns, and (ii) Owner its successors and assigns as to legal ownership of the Property.

Section 7. **No Partnership.** City and Owner do not by this Agreement in any way or for any purpose become partners or joint ventures with each other.

Section 8. **General Provisions.** The following provisions are also an integral part of this Agreement:

8.1. **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

8.2. **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

8.3. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

8.4. **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

8.5. **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

8.6. **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

8.7. **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

8.8. **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

8.9. **Attorneys' Fees.** In the event any action or proceeding is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial or on appeal.

8.10. **Notice.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address (es) as may be supplied by a party to the other from time to time in writing.

8.11. **Time of Essence.** Time is the essence of this Agreement.

8.12. **Assignment.** Owner may assign or otherwise convey its rights or delegate its duties under this Agreement only in connection with the conveyance of fee title to the Property. Such assignment and delegation shall be deemed to occur automatically and contemporaneously with any such conveyance. No such conveyance shall relieve the original Owner of its obligations hereunder; instead, the original Owner shall remain liable to assure and to guaranty the full and timely performance of all of Owner's obligations hereunder notwithstanding that a successor Owner may then hold legal title to the Property.

8.13 **Joint and Several Obligations.** All the obligations of Owners and successor Owners under this Agreement shall be joint and several obligations of each party.

DATED effective the date first above written.

OWNER:

Address: _____

Address: _____

CITY:

MILLCREEK

By: _____

Jeff Silvestrini, Mayor

ATTEST:

Elyse Greiner, CMC City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

SUBSCRIBED AND SWORN to before me by _____ this ____ day of _____, 2020.

Notary Public
Residing at: _____

My Commission Expires:

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 2020, personally appeared before me **Jeff Silvestrini** and **Elyse Greiner**, who being duly sworn, did say that they are the Mayor and City Recorder, respectively, of Millcreek, and said persons acknowledged to me that said municipality executed the same.

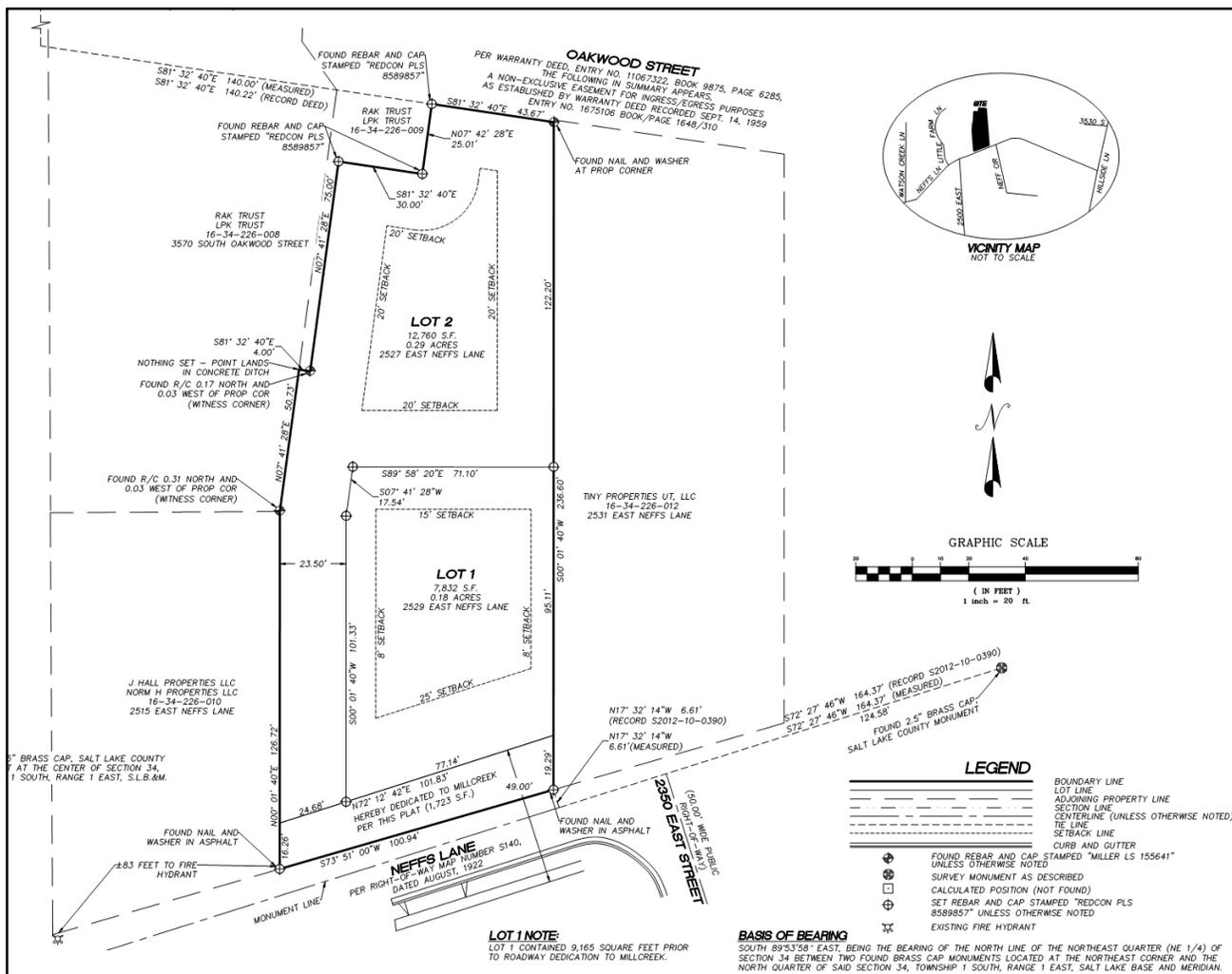
Notary Public
Residing at: _____

My Commission Expires:

Exhibit A to Deferral Agreement

A tract of land located in the Northeast Quarter of Section 34, Township 1 South, Range 1 East, of the Salt Lake Base and Meridian, Salt Lake County, Utah, being more particularly described as follows:

Beginning at a point being 1320.00 feet South 89°53'58" West, along section line and 554.47 feet South 00°01'40" West and 140.22 feet South 81°32'40" East from the Northeast Corner of said Section 34; and running thence South 81°32'40" East 43.67 feet; thence South 00°01'40" West 236.60 feet; thence South 73°51'00" West 100.94 feet; thence North 00°01'40" East 126.72 feet; thence North 07°41'28" East 50.73 feet; thence South 81°32'40" East 4.00 feet; thence North 07°41'28" East 75.00 feet; thence South 81°32'40" East 30.00 feet; thence North 07°42'28" East 25.00 feet, more or less, to the point of beginning.



**Exhibit B
to Deferral Agreement**

100.94 Linear Feet (LF) of 4' wide sidewalk equaling the length and width of the subject property as described in "Exhibit A" along Neffs Lane