Midway City Council
18 July 2023
Regular Meeting

Resolution 2023-18 /
Amended
Malinka Subdivision
Development Agreement

RESOLUTION
2023-18

A RESOLUTION APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE MALINKA SUBDIVISION

WHEREAS, Utah law authorizes municipalities to enter into development agreements for the use and development of land within the municipality; and

WHEREAS, the Midway City Council finds it in the public interest of the City of Midway to amend the development agreement with the developer of the Malinka Subdivision for the use and development of the land included within that proposed project;

NOW, THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council approves the amended development agreement attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

Section 2: The effect of this Resolution is subject to all conditions of the amended land use approval granted by the City for the proposed project.

PASSED AND ADOPTED by the Midway City Council on the day of 2023.

MIDWAY CITY

_____

Celeste Johnson, Mayor

ATTEST:

_____

Brad Wilson, Recorder

(SEAL)

Exhibit A

MALINKA SUBDIVISION
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2023, by and between PETER & EMILY MALINKA (hereinafter called the "Developer"), and the CITY OF MIDWAY, UTAH, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between the Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.,* in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Malinka Subdivision, located at 150 North 100 East, in Midway, Utah (hereinafter referred to as the "Project"), and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.

B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit "A", (hereinafter referred to as the "Property") attached hereto and incorporated herein by this reference. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.

C. The Developer intends to develop the Property as a five (5) lot density reduction subdivision. This Project is commonly known as the Malinka Subdivision. The proposed subdivision is on one 5.2 acre parcel. The subdivision is located at approximately 150 North 100 East in the R-1-15 zone, which allows for single family dwellings. There is currently a dwelling on the parcel that was previously deemed a lot-of-record. All setbacks from the dwelling to the proposed lot lines must comply with R-1-15 zone setbacks as outlined in City Code.

D. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges that they are valid for development of the Project. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or

requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in the City of Midway.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Effective Date and Term. The term of this Agreement shall commence upon the signing of this Agreement (the "Effective Date") by both Parties and shall continue for a period of two (2) years. Unless otherwise agreed between the City and the Developer, the Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.

Section 2. Definitions. Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the Exhibits.

"Applicable Law" shall have the definition set forth in Section 4A of this Agreement.

"Governing Body" shall mean the Midway City Council.

"City" shall mean the City of Midway, and shall include, unless otherwise provide, any and all of the City's agencies, departments, officials, employees or agents.

Section 3. Obligations of the Developer and the City.

A. Obligations of the Developer:
   i. General Obligations: The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is conditioned upon and in material consideration of the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein.
   ii. Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction

of all Project improvements no later than two (2) years after the recording of the plat for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto and incorporated herein by this reference.

iii. Conditions for Current Approvals: The Developer shall comply with all of the following Conditions:

a) Payment of Fees: Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

b) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the Project by the Governing Body. Should a final plat not be recorded by the County Recorder within the one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the Governing Body extends the time limit for plat recording, with or without reasonable conditions.

c) Density Reduction Subdivision: The purpose of a density reduction subdivision is to incentivize developers to voluntarily reduce the number of home sites per acre in exchange for simplified development infrastructure requirements. Density reduction subdivisions also help meet the City's goals of preserving open space, lowering potential density, and preserving the rural atmosphere of Midway. Density in such subdivisions must be reduced by two-thirds (2/3) the density allowed in the zone. Lots are deed restricted so that they can never be re-subdivided. One lot must meet the frontage requirements of the R-1-15 zone, but access to all other lots is allowed from private driveways that connect to a City standard road.

d) Water Rights and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer shall meet all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 14.26 acre feet. The lots will connect to existing City culinary water lines located in the area. The property is

currently connected to Midway Irrigation Company's secondary water system, and this will continue with the new development. Developer has provided the City Council with a will-serve letter from Midway Irrigation Company.

e) Access: Lots 1, 2, and 3 will access 100 East from the cul-de-sac bulb that will be built by the Developer. Lots 4 and 5 will have access from a private shared driveway that will be maintained by the two lot owners. The shared driveway requires a minimum 30-foot wide easement that must be shown on the plat. A 20-foot driveway with 5-foot shoulders must be built in the easement to comply with density reduction subdivision driveway requirements.

f) Sensitive Lands: No sensitive lands have been identified in the proposed development.

g) Sewer Connection: The lots will connect to existing Midway Sanitation District sewer lines located in the area. There is an existing sewer lateral that crosses the property from the Engfer property to the north. The sewer lateral must be relocated by the Developer and connected to the new sewer lines that will be installed with the subdivision infrastructure.

h) Fire Flow: A fire hydrant will be located within five hundred feet (500') of any future dwellings, measured by the route of a fire hose from the fire hydrant to the future home site.

i) Setback Requirements: There is a dwelling on the parcel that was previously deemed a lot-of-record. All setbacks from the dwelling to the proposed lot lines must comply with the setbacks provided for the R-1-15 zone in the City Land Use Code.

j) Density: The 5.2 acre parcel is wholly located in the R-1-15 zone. Density Reduction Subdivisions in the R-1-15 zone are allowed a maximum density of one (1) lot per acre. Based on the current acreage, the maximum density allowed in the subdivision is 5.2 lots.

k) Road Improvements: The Developer will build a City standard cul-de-sac on 100 East that will be dedicated to and maintained by the City. The Developer will reduce the diameter of the cul-de-sac and make it more symmetrical in order to preserve trees. The cul-de-sac must still comply with minimum fire district standards, which compliance will be determined at the discretion of City staff. The Developer will also build a private driveway that will be an easement on Lots 3, 4, and 5 and will be maintained by the lot owners that use the driveway.

l) Irrigation Line Easement: A service easement must be included across Lot 5 for Midway Irrigation Company. Developer must determine if the line across Lot 5 is a main or lateral line. If it is a private lateral, Developer must provide proof of a recorded easement in favor of the adjacent Engfer property. If it is

a public main line, it must be added to the plat. Any service lines that are located outside of the platted public easement must be added to the plat.

m) Deed Restriction: The approved lots on the 5.2 acres within the plat will be deed restricted so no further subdividing of any kind will be allowed within the subdivision plat. The density of the 5.2 acres will never be more than five dwellings, one per lot. A note must be placed on the plat indicating the restriction. Deed restrictions will also be recorded on the lots immediately after the plat is recorded so all future landowners will know of the restrictions prior to purchasing the property. The deed restriction language shall be as follows:

    1. *Any further subdividing of the lot is prohibited. The deed restriction prohibiting further subdivision of the lots within the development is created for the benefit of all of the lots within the development, all of the neighboring lots to the development, and Midway City. This deed restriction cannot be altered in any way without written consent from all of the above. This deed restriction is a covenant that runs in perpetuity with the land, and it shall inure to the benefit of the owners of each lot within the development, the owners of neighboring lots of the development, and Midway City, including all parties' heirs, successors or assigns. All future owners take title subject to this deed restriction and shall be bound by it.*

n) Midway Master Road Plan: There are currently two master planned roads that cross the property on the Master Road Plan. 200 North crosses east to west and 100 East crosses north to south. The applicant proposed in 2022 that the General Plan be amended to remove these two future roads. The City Council did conditionally approve the proposed amendment to remove the two roads during their November 15 meeting of that same year. The condition for removing the roads is the recording of a density reduction subdivision on their property with the deed restrictions that prohibit any further subdividing on any of the lots. Once the deed restrictions are recorded, the two future planned roads will be removed from the Midway Master Road Plan.

o) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project. Developer shall be responsible for weed control on the remainder parcel described herein.

p) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.

q) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.

r) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.

s) City's Right to Draw From Construction Bond: If Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, the City shall have the right to draw funds from the Developer's performance and other bonds.

t) CC&R Requirement: Developer shall put a provision in the CC&R's regarding the pine tree located on lot 3, prohibiting the tree from being cut down or removed unless the tree is diseased to the point that it is a danger to surrounding properties. This is required because the City agreed to reduce the size of the cul-de-sac in order to preserve this tree.

u) Plat Note Requirement: The following note will be included on the Plat: "The cul-de-sac was allowed to be reduced in size in order to preserve a historic pine tree located on Lot 3."

B. Obligations of the City:

i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is conditioned upon and in material consideration of the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.

iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that 1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; 2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; 3) the Project improvements are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements

pass a final inspection by the Midway City Planning and Engineering Departments.

Section 4. Vested Rights and Applicable Law.

A. Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City Ordinances and Resolutions, in force and effect on the date the City Council granted preliminary approval to Developer for the Project. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of the subdivision plat, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

B. State and Federal Law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. Amendment. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. Cooperation and Implementation.

A. Processing of Subsequent Approvals. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete

all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein. The City's obligations under this Section 6 are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny the application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

B. Other Governmental Permits.

1. The Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.
2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.B of this Agreement. However, the City shall not be required by this Agreement to join or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

Section 7. Default and Termination.

A. General Provisions.

1. Defaults by Developer. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material

default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

2. Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give to the Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.
3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
4. Determination of Non-Compliance. If the City Council finds and determines that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. If the default is not cured in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.

B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.

C. Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the

request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 8. Notice of Compliance.

A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to the Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledge by the City, certifying that 1) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.

B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer's written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

Section 9. Change in Developer, Assignment, Transfer and Required Notice. The rights of the Developer under this Agreement may be transferred or assigned, in whole or in part, with the written consent of the City, which shall not be unreasonably withheld. The Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the transfer or assignment.

Section 10. Miscellaneous Terms.

A. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

B. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of

competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

E. Covenants Running with the Land and Manner of Enforcement. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.

F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.

G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.

J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.

K. Representations. Each Party hereby represents and warrants to the other Party that the following statements are true, complete and not misleading as regards to the representing and warrantying Party:
    1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
    2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
    3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.

L. No Third-Party Beneficiaries. This Agreement is between the City and the Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 11. Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

If to the City of Midway:

Director
Planning Department
Midway City
P.O. Box 277
Midway, Utah 84049

With Copies to:

Corbin B. Gordon
Midway City Attorney
322 E. Gateway Dr. #201
Heber City, Utah 84032

If to Developer:

Peter and Emily Malinka
P.O. Box 862
Midway, Utah 84049

Section 12. Entire Agreement, Counterparts and Exhibits. Unless otherwise noted herein, this Agreement, including its Exhibits, as amended, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions

of this Agreement must be in writing and signed by the appropriate authorities of the City and of the Developer.

Section 13. Signing and Recordation of Agreement. Unless the City and the Developer mutually agree otherwise in writing, this Agreement must be signed by both the Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

IN WITNESS HEREOF, this Agreement has been entered into by and between the Developer and the City as of the date and year first above written.

CITY OF MIDWAY

_____
Celeste Johnson, Mayor

Attest:

_____
Brad Wilson, City Recorder

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

_____
NOTARY PUBLIC

THE DEVELOPER OF THE MALINKA SUBDIVISION

_____
Berg Engineering

By: _____
Its: _____

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by _____, who executed the foregoing instrument in his/her capacity as the _____ of the Developer.

_____
NOTARY PUBLIC

EXHIBIT A

(Legal Description of the Property)

BEGINNING AT A FENCE POST, SAID POINT BEING LOCATED SOUTH 2.60 FEET AND EAST 241.63 FEET FROM THE FOUND WASATCH COUNTY BRASS CAP MARKING THE WEST ¼ CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE NORTH 00°18’49” EAST 296.12 FEET ALONG A FENCELINE TO A FOUND REBAR WITH CAP MARKED PLS 145796; THENCE SOUTH 89°52’46” EAST 361.48 FEET ALONG A FENCE LINE TO A FOUND REBAR WITH CAP MARKED PLS 145796; THENCE NORTH 00°31’56” EAST 147.21 FEET ALONG A FENCE AND THE EXTENSION OF SAID FENCE LINE; THENCE EAST 274.11 FEET TO A FENCE LINE; THENCE NORTH 89°15’43” WEST 264.00 FEET; THENCE NORTH 89°52’57” WEST 360.35 FEET ALONG A FENCE TO THE POINT OF BEGINNING.

AREA = 5.20 ACRES