

**AGREEMENT RE: RIGHT-OF-WAY MAINTENANCE
SUNBEAM SUBDIVISION – PHASE 1**

THIS AGREEMENT, made and entered into this 13th day of April, 2021, by and between Marathon Partners, LLC, an Idaho limited liability company (the "Company") and City of Hailey, Idaho (the "City").

RECITALS

WHEREAS, City is a municipal corporation possessing powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to contract; and

WHEREAS, the Company is currently the entity charged with the management and upkeep of the Sunbeam Subdivision located within the City of Hailey, State of Idaho. Company intends to form an Idaho non-profit corporation for an owners' association ("Association") and to transfer responsibility for the management and upkeep to the Association; and

WHEREAS, the Phase 1 of the Sunbeam Subdivision ("Development") has been and will be developed in accordance with the terms and conditions of the Sunbeam Subdivision PUD Agreement, recorded as Instrument No. 670234 in the records of Blaine County, Idaho ("PUD Agreement"); and

WHEREAS, the terms of the PUD Agreement as well as conditions for approval of the plats associated with the Development provide that the Company will assume various obligations with respect to maintenance of landscaping within the Development which is situated within the City's public right-of-way (the "Maintenance Obligations"); and

WHEREAS, the Parties wish to memorialize the extent and ongoing and perpetual nature of the Maintenance Obligations as set forth herein;

NOW, THEREFORE, in consideration of the above stated facts and objectives, and for other valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

TERMS AND CONDITIONS**1. Landscaping within City Right of Way**

- A. The Company until formation of the Association and then the Association shall, at its sole expense, maintain all landscaping, including, but not limited to, grass, trees and shrubs which are located within the City's right of way within the Development, in good and healthy condition and in accordance with at least the minimum standards provided for "Street Trees" in the City's Tree Ordinance, Hailey City Code Chapter 12.20, as the same may be amended from time to time.
- B. The Company until formation of the Association and then the Association shall, at its sole expense, maintain in good condition, and repair and replace as appropriate, the irrigation system installed as part of the Development within the City's Right of Way. Said irrigation system shall utilize metered City water, and water usage shall be reasonable and consistent with the quantity of irrigation necessary to maintain drought tolerant grasses and street trees. All grasses shall be drought tolerant, requiring minimal irrigation water. Irrigation for right of way shall be provided by the City for such purposes at no charge.
- C. The City hereby grants the Company a license transferable to the Association on, over and under its right-of-way for the limited purposes of carrying out its Maintenance Obligations as

they relate to landscaping and irrigation as set forth in this paragraph. This license limits the Association to basic maintenance that doesn't interfere with vehicular or pedestrian traffic. The Association shall not remove concrete, asphalt and/or drainage structures without City approval.

2. The Maintenance Obligations may be contracted to third-party providers by the Company or the Association, but all costs associated therewith shall be the sole responsibility of the Company or the Association, as applicable. The Company and, upon formation, the Association hereby commits to a budget in advance for all the cost of all anticipated Maintenance Obligations, including capital reserves, and to assess the owners of real property within the Development on at least an annual basis sufficient funds to cover the costs of the Maintenance Obligations.

3. The Maintenance Obligations hereunder shall be perpetual, so long as this Agreement remains in effect, and shall be a covenant running with the private land included within the Development, and the terms and provisions hereof shall inure to the benefit of and be binding upon all owners of real property within the Development and their respective heirs, personal representatives, successors and assigns.

4. In the event the Company or Association after its formation fails to meet the Maintenance Obligations and does not cure such failure within thirty (30) days after written notice from City default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, Company or Association after its formation fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, the City shall have the right, but not the obligation, to take over the Maintenance Obligations and to place a lien on the Company's or Association's Assessment receipts to cover the costs of such Maintenance Obligations which the Company or Association has failed to perform. So long as the Company or Association is not in breach of this Agreement, the City shall NOT have the right to assume the Maintenance Obligations without the express written consent of the Company or Association as applicable.

5. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

6. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the Fifth Judicial District of the State of Idaho.

7. This Agreement, in coordination with the PUD Agreement and the City approvals related to the Development, set forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Sidewalks or the Local System other than as set forth in the agreements and approvals referenced in this paragraph.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written herein.

CITY OF HAILEY

By: Martha Burke

Martha Burke, Mayor

ATTEST:

Mary Cone

Mary Cone
Hailey City Clerk

MARATHON PARTNERS, LLC

By: Ed Dumke

Ed Dumke, Managing Member



STATE OF IDAHO)

: ss.

County of Blaine)

On this 28th day of April, 2021, before me the undersigned Notary Public in and for said State, personally appeared Martha Burke, known or identified to me to be the Mayor of Hailey and the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the City of Hailey.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at: Hailey Idaho
Comm. Expires: 9/30/2026

STATE OF IDAHO)
: ss.
County of Blaine)

On this 13th day of April, 2021 before me the undersigned Notary Public in and for said State, personally appeared Ed Dumke, known or identified to me to be the Managing Member of Marathon Partners, LLC, and the person who executed the foregoing instrument on behalf of said company and acknowledged to me he executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at: Bellevue
Comm. Expires: 3-16-22