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Marathon Partners, LLC Post Office Box 3118 Ketchum, ID 83353

Instrument # 682300

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DECLARATION ESTABLISHING COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNBEAM SUBDIVISION

RECITALS

- A. Marathon Partners, LLC an Idaho limited liability company, is the owner of all the real property comprising the Sunbeam Subdivision as set forth on the plat for Sunbeam Subdivision, Phase 1 recorded in the office of the Recorder for Blaine County, Idaho on 5/5/2021 as Instrument Number 682301, with the exception of Parcels A, B, E and F.
- B. The Declarant has developed the Property in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the City of Hailey and the laws of the State of Idaho.

DECLARATION:

Declarant hereby declares that the Property, and any additional real property as may be annexed as provided herein, is, and shall be, held, conveyed, encumbered and used subject to the following easements, covenants, conditions, restrictions, and equitable servitudes in furtherance of a plan for the subdivision, improvement and sale of the property subjected to this Declaration, and to enhance the value, desirability and attractiveness of such property. The Declaration set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interest in such property or any part thereof; shall inure to the benefit of every portion of such property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest, and may be enforced by Declarant, by any Owner, as hereinafter defined, or such Owner's successors in interest, or by the Association, as hereinafter defined.

ARTICLE I. DEFINITIONS

- 1.01 "Association" shall mean the Sunbeam Subdivision Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho.
 - 1.02 "Board" means the board of directors of the Association.

- 1.03 "Building Envelope" shall refer to the area within each Lot not in a front, rear or side yard setback area.
 - 1.04 "City" shall mean the city of Hailey, Idaho a municipal corporation.
- 1.05 "Committee" shall mean the Design Review Committee (DRC) established under Article V hereof.
- 1.06 "Declarant" shall mean Marathon Partners, LLC, an Idaho limited liability company.
- 1.07 "Lot" shall mean the numbered Lots shown on the Plat, whether improved or unimproved and shall include townhome sublots within the Lots identified for construction and use of cottage homes. Any property identified on the Plat as a "Parcel" is not a Lot.
- 1.08 "Owner" shall mean and refer to the record owner, including the Declarant, whether one or more persons of the fee simple title of any of the numbered Lots above described and shall include contract buyers, but exclude those having such interest merely as security for the performance of an obligation.
- 1.09 "Parcel C" shall mean the area within the Plat intended for Phase 2 of the Sunbeam Development.
- 1.10 "Plat" or "Subdivision Plat" shall mean the Plat for Sunbeam Subdivision, Phase 1 recorded as Instrument No. [68230] in the Office of the Recorder of Blaine County, Idaho.
- 1.11 "*Property*" shall mean all of the land described in the Plat, with the exception of Parcels A, B, C, D, E and F unless annexed into this Declaration by a supplemental declaration.

ARTICLE II. USE REGULATIONS AND RESTRICTIONS

2.01 The Property shall be used only for single family residential purposes. No residence shall be used for any purpose other than single-family residential purposes. Single-family residential use or purpose shall mean use or occupation of a principal residence or accessory dwelling unit by one single family unit comprised of persons related by blood, marriage or adoption, or who are in a committed interpersonal relationship, including domestic partners and life partners, and shall not include, without limiting the generality of the foregoing, uses or occupancy for a fee by multi-families, non-family members, businesses, professions, trades, commercial enterprises or other like pay for use occupancies including, without limitation, stays arranged through vacation clubs, time shares, online marketing services or other businesses offering similar hospitality arrangements to their clients or the public. There shall be only one residence rented on a Lot. All rental agreements must be for thirty (30) or more days and submitted to the Association prior to agreement by the Owner. Owners shall also submit a "tenant registration form" to the Association for each existing or proposed tenant, in a form prepared for the Association by the Board, no less than thirty (30) days prior to originating or extending a lease agreement. The Association may charge a reasonable review and processing fee concerning the

above. Additionally, any Owner wishing to lease his Lot must submit to the Association a security deposit ("Deposit"). The Deposit shall be debited should any tenant of Owner or the Owner fail to abide by the provisions of this Declaration. Additionally, subject to Section 11.04 D, if an Owner fails to abide by any provision of this section, the Association may assess a fine in the amount of five hundred dollars (\$500.00) a day against his or her Lot for each day he or she is in violation as well as pursuing its remedies under this Declaration and Idaho law.

The three (3) cottage lots depicted on the Plat shall be subdivided into townhome sublots and developed with cottage homes as defined in the City zoning ordinance. The Owners of cottage townhome sublots shall have the same rights and obligations as the Owner of any other Lot, including voting rights and assessment obligations except that the Association shall proportionately allocate to and assess the cottage townhome sublot Owners for cost of maintaining and repairing the common area located within their respective cottage lot.

Any business, trade, or similar activity is prohibited; provided, however, that an Owner may conduct business activities within a residence located upon a Lot so long as such business activities (i) are not observable or detectable from the exterior of the residence, (ii) comply with all governmental rules, regulations and ordinances, (iii) do not involve regular visitation by clients, customers, suppliers or other business invitees, (iv) do not involve any kind of door-to-door solicitations within the Property, (vi) do not constitute a nuisance, or a hazardous, illegal or offensive use, or threaten the security or safety of other persons, as may be determined in the sole discretion of the Board, and (vii) otherwise are in compliance with the Declaration.

- 2.02 The floor area of any primary dwelling located on any Lot except townhome sublots, exclusive of decks, open porches, carports and garages, shall be not less than one thousand two hundred (1,200) square feet. No building shall be constructed outside the Building Envelope, if any, for the Lot. All residences shall be constructed with conduit pre-installed for the installation of roof mounted passive solar panels.
- 2.03 No more than one single family dwelling and accessory structures and dwelling units as allowed by the City shall be erected or maintained on any one Lot together with no more than one detached outbuilding per Lot (subject to applicable zoning regulations).
- 2.04 "Modular Homes" shall be permitted only if approved by the Design Review Committee, but "Manufactured Homes" and "Shipping Container Homes" shall not be allowed. For the purpose of this provision, "Modular Homes" are homes which are created in sections, and then transported to the home site for construction and installation. These are typically installed and treated like a regular house, for financing, appraisal and construction purposes. Although the sections of the house are prefabricated, the sections, or modules, are put together at the construction site much like a typical home. Modular homes are built to conform to all applicable state, local and regional building codes that are necessary for the location of the home, just like site-built homes. "Manufactured Homes" are built onto steel beams and are transported in complete sections to the home site, where they are assembled. Wheels, hitch and axles are removed on site when the home is placed on a permanent foundation. Manufactured homes come in three sizes: single wide, double wide and triple wide, or any combination of the foregoing. "Shipping Container Homes" are homes designed out of modified container units.

- 2.05 All Lots shall be maintained by the Owner thereof, both prior to and after construction of improvements thereon, in an attractive manner, free of trash, excessive weeds, and other unsightly material. All improvements to any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof, and no improvement shall be entitled to fall into disrepair. All landscaping shall be maintained in a neat, trim and orderly fashion. Prior to the construction of improvements on a Lot, the Owner shall cause the Lot to be mowed as needed, but in no event less than two (2) times throughout the year to maintain a neat appearance and control weeds.
- 2.06 When the erection of any structure is approved, the work thereon must be prosecuted diligently, and said structure, including all landscaping pursuant to an approved landscaping plan, must be completed within eighteen (18) months, unless an extension is granted by the Committee upon a showing of good cause.
- 2.07 Easements for installation and maintenance of utilities and irrigation facilities are reserved as shown on the Plat or in separate agreements. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or irrigation facilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which the Association, a public authority or utility company is responsible.

All Lots have irrigation system components on the street frontage. Each Owner must when performing work avoid disrupting the irrigation system and repair any damage to the irrigation system. Sprinklers must be repaired and adjusted to maintain coverage as designed after driveway installation. Sprinklers and lines must be cut and removed under driveways and sleeves installed with 1.5 times or larger pipe size. Construction must be coordinated with the common area maintenance contractor before cutting in driveway to insure minimal interruption of common area watering schedule.

Lots 11 through 31 have irrigation easements on the rear lot line. Lot 32 has irrigation easement on the rear and North lot line. Lots 64 and 70 have an irrigation easement on the North lot line. A 2" poly pipe-line either buried or on the surface is located in the easement area and used to irrigate the trees. If an Owner damages the irrigation line it must be repaired at Owner expense within 24 hours. Once a home is built on any of the aforesaid Lots the Owner of the Lot shall be responsible for irrigating the trees within the easement on his/her/its Lot.

- 2.08 No vehicle repairs shall be permitted on any streets or driveways, except minor emergency repairs.
- 2.09 No activities shall be conducted on any Lot and no improvements constructed thereon which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot. No open fires shall be lighted or permitted on any Lot, except while under the direct supervision, control and surveillance of the Owner of the Lot; provided, however, burning trash, garbage and other refuse is prohibited.

- 2.10 No exterior radio, television or other telecommunication antenna, including, without limitation, any satellite dish, shall be erected or maintained on the Property, except that a satellite dish may be permitted upon proper screening with prior written approval by the Committee. All power, telephone, and cable or other telecommunication lines shall be located underground.
- 2.11 Nothing shall be done or kept on the Property which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance of any Association Property, or which would be in violation of any law.
- 2.12 No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (excluding Declarant) without the prior written approval of the Board; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Board for the transfer or sale of any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.
- 2.13 The capturing, trapping or killing of any wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons. No horses, cattle, livestock, household animals (except as specifically set forth below) or other animals of any kind shall be raised, bred or kept or maintained on any Lot. Up to three adult dogs, and up to three adult cats may be kept on each Lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided further that such animals are not allowed to run at large, and dogs shall not be allowed to bark excessively at any time of the day or night. Any such animal determined in the sole discretion of the Board to be running at large, creating a nuisance, making objectionable noise, endangering any person's health, safety, or property, or otherwise constituting an inconvenience to any Owner, shall be removed upon written request of the Board. If the owner of the animal fails to honor such request for removal within thirty (30) days after such written request, the Board shall be entitled to remove the animal, without liability therefor. The keeping of such animals shall be further subject to such fines, rules and limitations as may be set forth in the Rules.
- 2.14 No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the Property and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise, light, smell or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any such property without the prior written approval of the Board.
- 2.15 Nothing contained herein shall limit the right of Declarant to subdivide or resubdivide any portion of the Property or Parcel C, to annex Parcel C into this Declaration, to grant licenses, to reserve rights-of way and easements to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any

portion of the Property owned by Declarant, including Parcel C, or to alter the foregoing and its construction plans and designs, or to construct such additional improvements as Declarant deems advisable in the course of development of the Property so long as any Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall have the right at any time prior to acquisition of title to a Lot by a purchaser from Declarant to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to Declarant, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property and Parcel C. The rights of Declarant hereunder may be assigned by Declarant to any successor in interest in connection with Declarant's interest in any portion of the Property or Parcel C, by an express written assignment recorded in the Office of the Blaine County Recorder.

ARTICLE III. MAINTENANCE RESPONSIBILITIES OF THE ASSOCIATION

- 3.01 Except as otherwise provided, the title and fee to all lands platted as roads as shown on the Plat shall be dedicated to the City, who shall thereafter be responsible for the maintenance thereof. Private roads may be included on Cottage Lots shown on the Plat at the election of Declarant.
- 3.02 The Association shall perform those obligations contained in the Agreement Re: Right-Of-Way Maintenance Sunbeam Subdivision Phase 1 between Declarant and the City, dated April 28, 2021, providing for maintenance of the landscaping in the public right-of-way at Association expense using potable water to irrigate provided by the City at no expense and requiring the Association to plow the 10-foot multi-use path along San Badger Drive after recordation of the plat for Sunbeam Subdivision Phase 2 on Parcel C. All operational, maintenance and improvement expenses connected with the Maintenance Agreement shall be shared on an equal basis by the members of the Association. Each Owner's share of the expenses shall be computed by dividing the total expense by the total number of Lots in the subdivision, then multiplying that result by the number of Lots owned by the Owner.
- 3.03 The Association shall perform those obligations contained in the Canal Maintenance Agreement with the Hiawatha Canal Company, dated August 19, 2020 and recorded on September 2, 2020 in the official records of Blaine County, Idaho as Instrument No. 672660, providing for maintenance of the Hiawatha Canal that runs through the Property. All operational, maintenance and improvement expenses connected with the Maintenance Agreement shall be shared on an equal basis by the members of the Association. Each Owner's share of the expenses shall be computed by dividing the total expense by the total number of Lots in the subdivision, then multiplying that result by the number of Lots owned by the Owner.
- 3.04 The common area landscaping located on Parcel D shall be maintained by the Association. The Association shall maintain the Common Area and improvements incorporated therein in a good, safe and clean condition. Each Owner's share of the expenses shall be computed

by dividing the total expense by the total number of Lots in the subdivision, then multiplying that result by the number of Lots owned by the Owner.

3.05 The Association shall adopt and maintain a noxious weed control program for all plants listed as noxious weeds under the noxious weed program of Blaine County, Idaho.

ARTICLE IV. DESIGN CONTROL

- 4.01 The Committee shall be composed of three (3) persons as may be appointed by the Board each of whom shall serve for a term of one (1) year and at least one (1) of which is a member of the Board. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.
- 4.02 The vote or written consent of any two members shall constitute action of the Committee. The Committee shall report annually in writing all approvals and disapprovals of changes in the existing state of the Property to the Association.
- 4.03 No construction of structures shall be made or permitted without the prior written approval of the Committee. Notwithstanding the foregoing, approval of the Committee shall not relieve an Owner of his or her obligation to obtain appropriate approvals from local, state and/or federal agencies with respect to the proposed change if required.
- 4.04 The Committee shall have discretion to approve or disapprove any construction activities and shall exercise such discretion with the following objectives in mind: to carry out the general purposes expressed in this Declaration; to prevent violation of any specific provision of this Declaration or any supplemental declaration; to prevent any change which would be unsafe or hazardous to any persons or property; to minimize obstruction or diminution of the view of others; to assure that any change will be of good and attractive design and in harmony with the natural setting of the area; to assure that material and workmanship for all improvements are of a quality comparable to other improvements in the area; and to minimize maintenance and assure a better appearing area under all conditions.
- 4.05 Prior to the commencement of construction of any structure, the Committee shall require, in addition to submission in duplicate, of floor plans, elevation drawings from four (4) sides, all drawn to such scale as may be reasonably required by the Committee; descriptions of exterior materials and colors; final construction specifications; and a landscaping plan showing existing and proposed trees, shrubs, hardscape, lawn areas and sprinkler system. A reasonable fee, as shall be determined from time to time by the Association, shall be paid to the Association to cover costs and expenses of review. No proposed structure shall be deemed to have been approved by the Committee unless its approval is in writing executed by at least two (2) members of the Committee; provided, that approval shall be deemed given if the Committee fails to approve or disapprove of a proposed construction or to make additional requirements or request additional information within fourteen (14) days after a full and complete description of the proposed construction and all additional instruments, documents, plans and applicable fees have been furnished in writing to the Committee with a written and specific request for approval.

- 4.06 After approval by the Committee of any proposed construction, the construction shall be accomplished as promptly and diligently as possible and in complete conformity with the description of any plans and specifications provided to the Committee. Failure to complete construction in accordance with the plans and specifications therefor within eighteen (18) months of the date of Committee approval, unless an extension is granted by the Committee upon a showing of good cause, shall operate to automatically revoke the approval of the Committee. The Committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of construction. The Committee shall have the right and authority to record a notice to show that any construction on a Lot has not been approved or that any approval given has been automatically revoked.
- 4.07 The Committee may, from time to time, adopt Design Guidelines to assist owners in planning their improvements, which shall, in any event, include:
 - (a) All landscaping shall comply with the following water conservation guidelines:
 - the total land area of each Lot which can be landscaped with turf is as follows: for lots up to 8,000 square feet a maximum of 40% of the total land area; for lots greater than 8,000 square feet but less than 12,000 square feet a maximum of 35% of the total land area; for lots greater than 12,000 square feet but less than 14,000 square feet a maximum of 30% of the total land area; and for lots greater than 14,000 square feet a maximum of 25% of the total land area.
 - (ii) landscaping shall promote low water use vegetation through the use of drought tolerant plants either from an approved list or as recommended by a landscape design professional.
 - (iii) all irrigation systems shall be at a 70% distribution uniformity for turf areas or utilize EPA Water Sense Irrigation Controllers and heads or equivalent.

ARTICLE V ESTABLISHMENT AND ORGANIZATION OF ASSOCIATION

- 5.01 The Sunbeam Owners' Association, Inc., shall be incorporated as an Idaho not-for-profit corporation. The purposes and powers of the Association and the rights and obligations inherent in membership are set forth in its Articles of Incorporation, and the provisions of this Declaration with respect thereto are for general descriptive purposes only. The Association is and shall be obligated (a) to accept title to and maintain Common Areas and (b) to assure the functions and obligations imposed on it or contemplated for it under this Declaration.
- 5.02 The Association shall be governed by a Board composed of at least three (3) and not more than five (5) Directors, each of whom shall be elected at the first annual meeting.
- 5.03 Regular meetings of the Association will be held at the time and in the place prescribed by the By-Laws of the Association. The first annual meeting shall be held within ninety

- (90) days after the closing of the sale of the Lot representing the fifty-first (51st) percentile interest of the Lots described herein but in no event later than six (6) months after sale of the first lot.
- 5.04 Each Owner of each Lot is subject to assessment by the Association and shall be a member of the Association. Said membership shall be appurtenant to and shall not be severed from the Lot.
 - 5.05 The Association shall have two classes of voting membership:
 - Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
 - Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the occurrence of the later of any of the following events:
 - (a) when the total votes outstanding in the Class A membership in the Association equal the total votes outstanding in the Class B membership in said Association;
 - (b) the fourth anniversary of the recording of this declaration.
- 5.06 All elections shall be by secret ballot. Cumulative voting procedures shall be prescribed at all elections at which more than one position on the Board is to be filled.
- 5.07 So long as there are two classes of membership, one (1) director shall be elected solely by the votes of the Class A members.
- 5.08 Regular meetings of the directors shall be held quarterly or as deemed appropriate by the Association.
- 5.09 Any vote may be cast by an Owner in person or by proxy. All proxies shall be in writing, dated and signed by the Owners and filed with the Board of Directors before commencement of any meeting. No proxy shall extend beyond the specific meeting for which it was executed, and every proxy shall automatically cease upon sale by the Owners of his or their Lot or upon death or incapacity of the member executing the proxy statement.
- 5.10 Where the vote or written assent of the membership is required for any action contemplated herein, such action shall require the prescribed percentage of each class of voters during the time there are two classes of membership.

ARTICLE VI. PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

- 6.01 Each Member of the Association shall have the right of enjoyment of their Lot subject to the following conditions:
- (a) The right of the Association to suspend the rights and privileges, including voting rights of any member for any period during which an assessment (to which his interest is subject) remains unpaid and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations and for the right to impose monetary penalties for violation of such rules and regulations after hearing by the Board. Any Owner shall be given ten (10) days' notice of any such hearing by mail to his or her address as it appears on the books of the Association.
- (b) The right of the Association to charge reasonable fees for the use of any facility belonging to the Association.
- (c) The right of the Association to borrow money for the purpose of improving the common area and facilities.

ARTICLE VII. CREATION OF ASSESSMENT LIENS

- 7.01 The Declarant, for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.
- 7.02 The assessment levied by the Association shall be used exclusively to (i) promote the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the property owned by the Association and including, but not limited to, the payment of taxes and insurance for the common properties, and repair, replacement and additions hereto and for the cost of labor, equipment, materials, management and supervision of the Association property
- 7.03 In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement to be performed on the Lots or Association property or of a capital improvement upon the Association's property, including fixtures and personal property related thereto and for the purpose

of performing any unanticipated maintenance, provided that any such assessment in excess of five percent (5%) of the annual budgeted expense of the Association shall have the assent of fifty-one percent (51%) of the votes of all of the Class A members and fifty-one (51%) of all the Class B members, if any, of the Association. Such votes shall be case in person or by proxy at a meeting duly called for this purpose as provided in Section 7.04 next following.

- 7.04 Written notice of any meeting of the members of the Association shall be sent to all members at their address shown in the books of the Association, by regular mail, not less than ten (10) days nor more than forty-five (45 days in advance of the meeting and shall describe the nature of the business to be conducted. The presence at any meeting of the members or of proxies entitled to cast twenty-five percent (25%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. Such adjournment shall be for not less than five (5) days and not more than thirty (30) days from the original meeting date. In the absence of a quorum, no other business may be conducted at any such meeting.
- 7.05 Annual and special assessments shall be fixed on a pro rata basis for each Lot and shall be collected by the Association on a quarterly basis. The directors of the Association shall estimate the charges required to be paid by the Association during the calendar year. The total annual assessments against all Owners shall be based upon advance estimates of cash requirements. Owners shall not be entitled to take offsets from assessment amounts for any reason.
- 7.06 The annual assessments provided for herein shall commence on the first day of the month following the closing of the first sale of a Lot to a purchaser.
- 7.07 Without written consent or a majority vote by the members of the Association residing in members, the annual assessment may not be increased more than twenty percent (20%) over that of the last preceding annual assessment.
- 7.08 Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. Each of the Owners do hereby grant and appoint the Board as trustee to enforce such lien and to foreclose such lien by private power of sale, and the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Owner and the Board may have to enforce the provisions hereof.
- 7.09 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect any assessment lien. However, the sale of any Lot pursuant to a mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

7.10 In addition to the remedies stated above, the Association upon violation or breach of any covenant, restriction or condition contained in this declaration, may enter upon any Lot where such violation or breach exists and may abate or remove the thing or condition causing the violation or breach or may otherwise cure the violation or breach. The costs incurred shall be billed to and paid by the Owner of the Lot. If the Owner of any Lot fails, after demand, to pay such costs then the Association shall have a lien, from and after the time a notice of such failure to pay is recorded in the records of Blaine County, Idaho, against the Lot of such Owner or Owners for the amount due and not paid, plus interest from the date of demand for payment at the statutory rate, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees.

ARTICLE VIII. DAMAGE OR DESTRUCTION OF ASSOCIATION PROPERTY

In the event of damage to or destruction of the property of the Association, or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a special assessment in accordance with the provisions of this declaration, to cover the additional cost of the repair or replacement not covered by the insurance proceeds. Such special assessment is not in addition to any other regular assessments made against Owners and is subject to the rules herein relating to Special Assessments. If any damage or destruction is caused by a casualty not insured against, then the repair or reconstruction shall be accomplished in the manner provided by a written agreement approved by the Owners representing more than fifty percent (50%) of all the Lots after the plans for any repairs or reconstruction have been approved by the Association.

ARTICLE IX. LENDER'S REGULATIONS

In order that residential dwelling units erected on the Property may qualify for existing subsidized lending programs, it is declared that the following rights exist in favor of any first mortgagee, notwithstanding contrary or conflicting provisions contained herein.

- 9.01 The first mortgagee of any dwelling unit may, by written notice to the Association, request written notice of any default by the mortgagor of such dwelling unit in the performance of such mortgagor's obligations under this declaration within thirty (30) days. Such request shall state the name and mailing address of the mortgagee, and the official records book and page number, file number or other reference identifying such recording, and the Lot number encumbered by said mortgage, and a reference to this declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgagee at the address stated in such request. Following the elapse of two (2) years from the date of receipt of the written request last given by any mortgagee pursuant to this Article, the Association shall have no further duty to notify such mortgagee if mortgagor defaults.
- 9.02 Any first mortgagee that comes into possession of a dwelling unit pursuant to the remedies provided for in the mortgage, or foreclosure of the mortgage, shall be exempt from an

existing right of first refusal of any party as to the purchase of such dwelling unit from the mortgagee thereof.

- 9.03 Unless at least seventy-five percent (75%) of the first mortgages (based upon one (1) vote for each mortgage) of dwelling units within the subdivision have given their prior consent, the Association shall not be entitled to:
 - (1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the dwelling units in the subdivision. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such subdivision shall not be deemed a transfer within the meaning of this clause);
 - (2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
 - (3) By act or omission change, waive or abandon any scheme or regulation, or enforcements thereof, pertaining to the architectural; design or the exterior appearance of dwelling units, the maintenance of party walls, or common fences and driveways, or the upkeep of walls and plantings in the subdivision;
 - (4) Fail to maintain fire and extended coverage on insurable common area on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
 - (5) Use hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such improvements.
- 9.04 First mortgagees shall have the right to examine the books and records of the Association, upon reasonable advance request in writing.
- 9.05 First mortgagees of dwelling units in the subdivision, may jointly or singly, pay taxes which are in default and which may or have become a charge against common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on lapse of a policy, for such property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.
- 9.06 Nothing herein or in the Articles of Incorporation of the Association, or in any other instrument relating to the Property, gives any Owner of any Lot or other party priority over any rights of first mortgagees pursuant to their mortgages, in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of common property in the subject subdivision.
- 9.07 Any mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved or consented to such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the

date of the Association's request, provided the request is delivered to the mortgagee by certified or registered mail, return receipt requested.

9.08 The terms "mortgage", "mortgagor" and "mortgagee" as used in this Article shall include respectively a deed of trust and the trustor and beneficiary thereunder.

ARTICLE X ANNEXATION OF SUNBEAM SUBDIVISION PHASE 2

- 10.01. Declarant hereby reserves to itself and its successors and assigns the right to annex Sunbeam Subdivision, Phase 2 depicted as Parcel C on the Plat into the Sunbeam Subdivision by recording a Supplemental Declaration, pursuant to the provisions of this Article. Upon the recording of a Supplemental Declaration containing the provisions set forth in this Section, except as may be provided for therein, the covenants, conditions and Declaration contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Lots within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration. Any Notice of Annexation or Supplemental Declaration to be recorded hereunder shall contain the following information:
 - A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of Blaine County where this Declaration is recorded;
 - B. An exact legal description of the added land;
 - C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and
 - D. A statement of the use Declaration applicable to the annexed property, which Declaration may be the same or different from those set forth in this Declaration.
- 10.02 Easements, as may be depicted on any recorded plat of the Property or Parcel C or as otherwise may be required in, under, over and across the Property for the installation and maintenance of electric, security, telephone, cable, water, gas, sewer and any other utility, telecommunication or other service, including meters therefor, as are deemed necessary or convenient to service the Property and Parcel C, are hereby reserved to Declarant together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Owners of their Lots.

ARTICLE XI. MISCELLANEOUS PROVISIONS

- 11.01 <u>Amendment</u>. Unless otherwise specified with respect to a specific provision of this Declaration, the provisions hereof may be amended by a vote or the written consent of more than fifty percent (50%) of each class of members.
- 11.02 Notice. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered by personal service or United States mail. If delivery is made by mail, it shall be effective upon the earlier of: (i) when received; (ii) five (5) days after its deposit in the United States mail, as evidenced by sworn affidavit or postmark, if mailed correctly addressed, with first class postage affixed; or (iii) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Such notice shall be deemed correctly addressed if addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.
- 11.03 <u>Interpretation</u>. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

11.04 Enforcement and Non-Waiver.

- A. <u>Right of Enforcement</u>. Except as otherwise provided herein, Declarant, the Association and any Owner of any Lot within the Property shall have the right to enforce any or all of the provisions of the Declaration upon any property within the Property and the Owners thereof.
- B. <u>Violations and Nuisance</u>. Every act or omission whereby any provision of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant, the Association, or any Owner or Owners of Lots within the Property. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board or the duly authorized agents of any of them, may enforce by self-help any of the provisions of the Declaration, and only if such self-help is preceded by notice, as required under the Declaration, to the Owner.
- C. <u>Violation of Law</u>. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.
- D. <u>Remedies Cumulative</u>. The Association may impose fines for a violation of the covenants and restrictions pursuant to rules and regulations adopted by the Board which require (i) a majority vote by the Board prior to imposing any fine on a member; (ii) written notice to the member by personal service or certified mail of the meeting during which such vote of the Board is to be taken at least 30 days prior to the meeting; (iii) prohibits imposition of a fine

in the event the member begins resolving the violation prior to the meeting and continues to address the violation in good faith until fully resolved; and (iv) prohibits use of any fine to remunerate any Board member or agent of the Board. Each remedy provided by the Declaration is cumulative and not exclusive.

E. <u>Non-Waiver</u>. The failure to enforce any of the provisions of the Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of said Declaration.

11.05 Construction.

- A. <u>Declaration Construed Together</u>. All of the provisions of the Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Property as set forth in the preamble of this Declaration.
- B. <u>Declaration Severable</u>. Notwithstanding the provisions of the foregoing Paragraph A, each of the provisions of the Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- C. <u>Singular Includes Plural</u>. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- D. <u>Captions</u>. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.
- 11.06 <u>Attorneys' Fees</u>. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit, including on appeal.
- 11.07 <u>Effect of Declaration</u>. This Declaration is made for the purpose set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

DATED this <u>5</u> day of May 2021.

Marathon Partners, LLC, an Idaho limited liability company

Edmund Dumke Manager

STATE OF IDAHO) ss. County of Blaine)

On this ______ day of May 2021 before me, a Notary Public in and for said State, personally appeared Edmund Dumke, known or identified to me to be the Manager of Marathon Partners, LLC, a limited liability company, the member who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

EMILY B WOOD COMMISSION NUMBER 20203958 NOTARY PUBLIC STATE OF IDAHO MY COMMISSION EXPIRES 10/07/2026 Emily B. Wood

Notary Public for Idaho

Residing at <u>VELCHUM</u>

My Commission expires: 10 7 2026