



BY: \_\_\_\_\_

**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**

Lawson Laski Clark, PLLC  
Post Office Box 3310  
Ketchum, ID 83340  
Attn: Edward A. Lawson

**Instrument # 670234**

HAILEY, BLAINE, IDAHO  
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Recorded for : CITY OF HAILEY  
JOLYNN DRAGE Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENT/CORRECTION

(Space Above Line for Recorder's Use)

**SUNBEAM SUBDIVISION PLANNED UNIT DEVELOPMENT AGREEMENT**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (“**Agreement**”) is dated for reference purposes this 18<sup>th</sup> day of June, 2020, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (“**City**” or “**Hailey**”) and MARATHON PARTNERS, LLC, an Idaho limited liability company (“**Owner**”, and together with the City, the “**Parties**”).

**RECITALS**

A. City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to approve planned unit developments and the power to contract. A development agreement between the Parties is a collaboration that will provide mutual benefit for the Parties and residents of the City.

B. Owner owns the real property within the municipal boundary of the City of Hailey, Idaho and more particularly described as Tax Lot 6655, Sections 9 and 10, T2N, R18E records of Blaine County, Idaho which is currently zoned Limited Residential-1 (LR-1) (“**Property**”). The Property was annexed into the City pursuant to an Annexation Agreement dated October 12, 1981 and recorded in Blaine County, Idaho on August 26, 1992 as Instrument No. 344111 (“**Annexation Agreement**”) under and by virtue of paragraph 5(b) of which Owner is obligated to pay the City, two hundred and fifty dollars (\$250.00) for each of the 115 lots in the development, with 15% simple annual interest thereon from October 12, 1981, being the sum of one hundred ninety five thousand four hundred eighty four and 25/100 dollars (\$195,484.25) through June 1, 2020 and eleven dollars and eighty two cents (\$11.82) for each day thereafter until the plat for Phase 1 is recorded at which time the entire amount becomes due and payable.

C. Owner has applied for subdivision approval (“**Land Use Applications**”) to develop the Property in two phases (each a “**Phase**”) as a single planned unit development (“**PUD**”) consisting of 147 residences comprised of 109 single family lots and 6 cottage townhome lots for 38 residences, a 7.88 acre park all as described and depicted in the Sunbeam Subdivision, Phase 1 prepared by Galena Engineers, Inc., dated May 14, 2020 (“**PUD Development Plan**”).

D. City has the capacity to provide essential services to the PUD, including, water, sewer, and emergency services.

E. City, having held all lawfully required public hearings and public meetings for consideration of each of the Land Use Applications and this Agreement; approving each of

the Land Use Applications, and this Agreement; having adopted findings of fact, conclusions of law as the written decision with regard thereto in conjunction with this Agreement; and having determined it is in the best interests of City and Owner that the Property be developed in accordance with this Agreement and the PUD Development Plan.

F. City and Owner enter this Agreement for the purpose of fulfilling the requirement of HMC §17.10.050.05 establishing certain rights and obligations of the Parties with regard to the development of the Property, including limitations as to the use, development, design, phasing, construction of necessary improvements, describing modifications granted and amenities provided, a schedule for development and mitigating the impacts directly attributable to the PUD.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein, City and Owner hereby mutually covenant and agree as follows:

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties agree as hereinafter provided,

**1. Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.

**2. Incorporation of Related Agreements, Approvals, Plans, Permits and Other Documents.** The following agreements, approvals, plans, permits and other documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:

PUD Findings of Fact, Conclusions of Law and Decision dated June 8, 2020

PUD Development Plan

Subdivision Findings of Fact, conclusions of Law and Decision dated June 8, 2020

Phase 1 Park Detail plans prepared by BYLA

Annexation Agreement dated October 12, 1981.

Any material failure to comply with the terms and conditions of any of the above-referenced agreements, approvals, plans, permits and other documents shall constitute a breach of this Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the agreements, approvals, plans, permits and other documents listed above, the terms and conditions of this Agreement shall govern. The parties acknowledge and agree that all executory terms and conditions of the Annexation Agreement are incorporated herein, and that Owner's performance of its obligations hereunder will fully satisfy all obligations under the Annexation Agreement.

Except as provided otherwise in this Agreement, development of the Project shall be vested and governed by policies, procedures, guidelines, ordinances, codes and regulations of the City governing land use in effect as of the date of this Agreement. Any amendments or additions made during the term of this Agreement to City policies, procedures, guidelines, ordinances, codes or regulations shall not apply to or affect the conditions of development of the Project; provided, however, the following are exempt from vesting under this Agreement:

- i) plan review fees and inspection fees.
- ii) amendments to building, plumbing, fire and other construction codes.
- iii) City enactments that are adopted pursuant to state or federal mandates that preempt the City's authority to vest regulations.

Owner may request to be bound by future amendments to the City Municipal Code, or other regulations, policies or guidelines affecting development, and such request may be approved administratively provided no new land use not allowed under this Agreement and no increase in total square footage of structures to be developed is proposed. In all other instances, the request to be bound by future amendment(s) shall be approved by the Council as an amendment to this Agreement.

**3. Right to Develop.** Subject to the requirements of this Agreement, the Owner and all future owners of some or all of the Property shall have the right to develop, construct, improve and use the Property for single family residential purposes as depicted and described in the PUD Development Plan, including the following modification or waivers of zoning or subdivision requirements:

- (i) 24 lots and 38 cottage units of less than the 8,000 square foot required in the LR-1 zone;
- (ii) 29 lots and 38 cottage lots of less than 75 feet wide;
- (iii) one flag lot in Phase 1 and one flag lot in Phase 2;
- (iv) private streets for ingress to and egress from the cottage lots whether or not serving more than five residential dwelling units;
- (v) a requirement of only two parking spaces per cottage unit accessed from a private street; and
- (vi) allowance of parking on City streets, subject to winter restrictions.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents

may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty (30) days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this Agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all inconsistent terms and conditions of the approvals referenced in Section 2 shall be deemed to have been amended to conform the amendment to this Agreement.

**4. Phased Development.** The Property may be developed in one or two phases at the discretion of Owner as set forth in the PUD Development Plan consisting of 147 residential units comprised of 109 single family lots and 6 cottage townhouse lots for 38 residential units. The first Phase (“**Phase 1**”) shall consist of the following:

- (i) a 4.54-acre park integrated into the existing Curtis Park depicted on the PUD Development Plan as Parcel A, and a six (6) foot wide pedestrian trail across the northeast corner of Lot 32 where shown on the PUD Development Plan.
- (ii) 67 single family lots
- (iii) 3 cottage townhouse lots containing 18 cottage units and
- (iv) the well site described in paragraph 6, below.

All cottage lots depicted in the PUD Development Plan must be developed with cottage units by the Owner or its successors or assigns. Owner shall use commercially reasonable efforts to expedite the development of said cottage units. The second Phase (“**Phase 2**”) shall consist of all improvements not included in Phase 1 including a 3.34-acre park depicted on the PUD Development Plan as Parcel B, 42 single family lots and 3 cottage lots containing 20 cottage units.

The streets and combined 7.88-acre park depicted on the PUD Development Plan shall be dedicated to the City for public use at the time of recordation of the plat for Phase 1. An easement shall be reserved by Owner to permit continued agricultural use of the Phase 2 land areas until recordation of the plat for Phase 2 at which time the easement shall be vacated and of no further force or effect. All park improvements shall be constructed by Owner at its expense in accordance with the Phase 1 Park Detail plan prepared by BYLA.

A reasonable number of existing mature conifer trees along the north and east boundary of the Property shall be preserved. Areas will be set aside as depicted on the PUD Development Plan for future development as a public bus stop on Quigley Road and near the proposed park.

The Declaration of Covenants, Conditions and Restrictions impressed upon the Property at the time of recordation of the plat for Phase 1 (“**Declaration**”) shall

- (i) provide for the formation and operation of an owners’ association (“**Association**”),

- (ii) require that the Association perform those obligations set forth in an agreement to be made with the City providing for the maintenance of the landscaping in the public right-of-way at Association expense irrigating with municipal water provided by the City at no charge to the Association,
- (iii) requiring each residence on the Property be wired to accommodate solar energy devices and systems,
- (iv) requiring the Association to plow the 10-foot multi-use path along San Badger Drive starting at the time of recordation of the plat for Phase 2, and
- (v) requiring all water conservation measures and green building standards spelled out herein below.

**5. Water Rights and Water Conservation.** Potable water and water for irrigation of the residential lots shall be provided by municipal water. Owner shall dedicate and convey to the City 0.20 cubic feet per second of Owner's surface irrigation Water Right No. 37-21112 for the irrigation of 7.4 acres within park parcels A and B (the "**Park Dedicated Water Right**") to be dedicated to and maintained by the City of Hailey. A supplemental municipal connection shall be provided for these areas in the event the Dedicated Water Right is shut off or otherwise becomes completely or partially unavailable prior to the end of the irrigation season. All other irrigable areas within the Property shall be irrigated by municipal water services. Owner shall construct the improvements necessary to deliver the Dedicated Water Right from the Hiawatha Canal through the existing diversion serving Curtis Park to the subdivision parks. The improvements shall be conveyed to the City which shall operate the irrigation system.

All residential and park area landscaping and irrigation shall be consistent with the Wood River Land Trust's "*Trout Friendly Lawn*" program and those programs adopted and implemented by the City on all residential properties. In addition, irrigated areas in the right-of-way shall feature drought tolerant grass species. Additional measures to conserve water, limit irrigation times, chemical use and species of grass and percentages of lot areas where irrigation of grass turf is permissible shall be set forth in the Declaration, including the following:

- (i) Owner shall apply for and diligently and in good faith prosecute to completion an application for level 3 certification under the National Green Building Standard (NGBS) ICC-700 2015 – Land Development.
- (ii) Restrictions on the total land area of each lot which can be landscaped with turf consistent with the following: 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 up to a maximum of 3,500 square feet; for lots greater than 12,000 square feet but less than 14,000 square feet a maximum of 30% of the total land area up to a maximum of 3,500 square feet; and for lots greater than 14,000 square feet a maximum of 25% of the total land area.
- (iii) A requirement that residential lots (A) use qualified drought tolerant plantings from an approved Association list or as recommended by a landscape design

professional (B) an irrigation system that has 70% distribution uniformity for turf areas and/or utilizes EPA WaterSense irrigation controllers and heads or equivalent and (C) use turf grass recommended by the Turfgrass Water Conservation Alliance (TWCA) or the equivalent, wherever turf is planted.

**6. Public Well, Additional Water Rights or In-Lieu Payment.** Owner shall convey to the City the well site depicted on the PUD Development Plan and convey to the City 0.60 cubic feet per second of Owner's surface irrigation Water Right No. 37-21112 for the irrigation of 22.6 acres. The conveyance of the well site and water rights shall be made at the time of recordation of the final plat for Phase 1. The well and building shall be developed at the expense of the City in accordance with a design, including sound mitigation measures, mutually agreed to by the parties hereto. The water rights conveyed by Owner to City pursuant to this paragraph shall be leased by the City to Owner for one dollar (\$1.00) each year following the conveyance until recordation of the plat for Phase 2.

**7. No Other Conditions of Approval.** City has determined that except as otherwise expressly set forth in paragraphs 4, 5, and 6, that no other conditions need be attached to the PUD to mitigate potential adverse impacts to the City's infrastructure, to further the City's land use policies or ensure the benefits to be derived from the PUD. Accordingly, City hereby unconditionally and knowingly waives its right to attach conditions to the PUD under paragraph D of HMC § 17.10.050.04, except as set forth in paragraphs 4, 5 and 6 of this Agreement.

**8. Term.** The term of this Agreement shall be perpetual, subject to the conditions set forth above.

**9. Miscellaneous Provisions.**

a) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, City's Zoning Ordinance, Subdivision Ordinance, and Planned Unit Development requirements for the Property.

b) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both Parties and as evidenced by amended plats and development plans.

c) Specific Performance. In the event of a breach of this Agreement, in addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

d) Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded.

e) Notices. All notices required or provided for under this Agreement shall be in writing and deemed delivered upon delivery in person or upon mailing by certified mail, return receipt requested, postage prepaid. However, the time period in which a response to such notice must be given shall commence to run from the date of receipt on the return receipt of the notice. Rejection or refusal to accept, or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

Notices to City shall be addressed as follows:

City of Hailey  
115 Main Street South, Suite H  
Hailey, ID 83333  
Attn: Community Development Director  
Email: [lisa.horowitz@haileycityhall.org](mailto:lisa.horowitz@haileycityhall.org)

Notices given to Owner shall be addressed as follows:

Marathon Partners, LLC  
Post Office Box 3118  
Ketchum, ID 83340  
Attn: Ed Dumke  
Email: [edumke@mac.com](mailto:edumke@mac.com)

with a copy to:

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
Post Office Box 3310  
Ketchum, Idaho 83340  
Attn.: Edward A. Lawson  
Telephone: 208.725-0055  
Email: [eal@lawsonlaski.com](mailto:eal@lawsonlaski.com)

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

f) Reliance by the Parties. This Agreement is intended by Owner to be considered by the City as part of Owner's Land Use Applications. Owner acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said Land Use Applications.

g) Relationship of Parties. It is understood that the contractual relationship between City and Owner is such that neither party is the agent, partner, or joint venturer of the other party. No third parties are intended beneficiaries of this Agreement.

h) Successors and Assigns; Covenant Running with the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. City agrees to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination. Upon recordation of a deed or other instrument of conveyance of individual lots or cottages to third parties as an incident of a bona fide sale or conveyance all of the financial obligations of Owner set forth herein shall automatically be released from said individual lots and cottages.

j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

n) Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

o) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof.



p) Force Majeure. If either party hereto is delayed in the performance of any of its obligations hereunder because of inclement weather; material shortages; labor shortages; unavailability of gas, electric or other utilities through no fault of Owner; dispute or strike; civil strife; acts beyond the control of the delayed party including, viruses, communicable diseases, epidemics, market conditions, lack of credit facilities, acts of God; and actions by the United States of America or the State of Idaho, or the City of Hailey or any of their agencies, the time of performance for completion of such amenity or improvement shall be extended for the same time as lost by the cause hereinabove set forth.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Marathon Partners, LLC, an Idaho  
limited liability company

City of Hailey, Idaho, a municipal  
corporation

By: Ed Dumke  
Ed Dumke, Managing Member

By: Martha Burke  
Martha Burke, Mayor



