

**FIRST AMENDMENT TO AMENDED AND RESTATED SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
APEX SUBDIVISION
(Annexation – Apex Northwest Subdivision No. 1)**

July 26, 2022

RECITALS

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Amended and Restated Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Apex Subdivision, recorded as Instrument No. 2022-065767 on July 22, 2022, in the records of Ada County, Idaho, as may be amended from time to time (collectively "Amended and Restated Supplemental Declaration");

WHEREAS, Section 12.01 of the Amended and Restated Supplemental Declaration allows for Declarant's annexation of additional property to the Subdivision, which additional property, when annexed, is brought within the provisions of the Amended and Restated Supplemental Declaration; and

WHEREAS, the purpose of this Amendment is to annex the additional property hereafter described, and upon such annexation to subject such additional property to all of the terms, covenants, conditions, restrictions and easements contained in the Amended and Restated Supplemental Declaration, and to supplement the Amended and Restated Supplemental Declaration with additional or different covenants and restrictions expressly provided hereafter, if any, which covenants and restrictions shall apply to only the Annexed Property.

ARTICLE I.
PROPERTY COVERED

The property which is covered by this First Amendment and which shall be annexed under the Amended and Restated Supplemental Declaration is the real property owned by Smith Brighton Inc., an Idaho corporation, the Declarant, and is described as follows (hereafter "Annexed Property"):

Lots 1 through and including 66, Block 2 in APEX NORTHWEST SUBDIVISION NO. 1, according to the official plat thereof filed in Book 124 of Plats at Pages 19693 through and including 19698, inclusive, as Instrument No. 2022-066593 on July 26, 2022, records of Ada County, Idaho.

**FIRST AMENDMENT TO AMENDED AND RESTATED SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
APEX SUBDIVISION
(Annexation – Apex Northwest Subdivision No. 1)**

July 26, 2022

RECITALS

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Amended and Restated Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Apex Subdivision, recorded as Instrument No. 2022-065767 on July 22, 2022, in the records of Ada County, Idaho, as may be amended from time to time (collectively “Amended and Restated Supplemental Declaration ”);

WHEREAS, Section 12.01 of the Amended and Restated Supplemental Declaration allows for Declarant’s annexation of additional property to the Subdivision, which additional property, when annexed, is brought within the provisions of the Amended and Restated Supplemental Declaration; and

WHEREAS, the purpose of this Amendment is to annex the additional property hereafter described, and upon such annexation to subject such additional property to all of the terms, covenants, conditions, restrictions and easements contained in the Amended and Restated Supplemental Declaration, and to supplement the Amended and Restated Supplemental Declaration with additional or different covenants and restrictions expressly provided hereafter, if any, which covenants and restrictions shall apply to only the Annexed Property.

ARTICLE I.
PROPERTY COVERED

The property which is covered by this First Amendment and which shall be annexed under the Amended and Restated Supplemental Declaration is the real property owned by Smith Brighton Inc., an Idaho corporation, the Declarant, and is described as follows (hereafter "Annexed Property"):

Lots 1 through and including 66, Block 2 in APEX NORTHWEST SUBDIVISION NO. 1, according to the official plat thereof filed in Book 124 of Plats at Pages 19693 through and including 19698, inclusive, as Instrument No. 2022-066593 on July 26, 2022, records of Ada County, Idaho.

ARTICLE II.
DEFINED TERMS

Unless the context otherwise specifies or requires, the words and phrases in this First Amendment shall have the same meaning as such words and phrases are defined in the Amended and Restated Supplemental Declaration .

ARTICLE III.
ANNEXATION

Pursuant to Section 12.01 of the Amended and Restated Supplemental Declaration, the Declarant hereby declares that the Annexed Property is annexed to the Property, and brought within the provisions of the Amended and Restated Supplemental Declaration , and is hereby made part of the "Subdivision" and "Property", subject to all of the covenants, conditions, restrictions and easements of the Amended and Restated Supplemental Declaration.

ARTICLE IV.
COMMON AREA LOTS

The following provisions shall be applicable to and govern the Common Area Lots within the Annexed Property, and also shall also be applicable to and govern all existing and future Common Area Lots owned by the Association, as may be annexed into the Property from time to time:

- (a) **Ownership/Control of Common Area Lots.** At a date not later than the date that a majority of the Lots within the Annexed Property are improved with dwelling units and occupied, the Declarant shall convey fee title to Lots 1, 8, 12, 13, 14, 18, 28, 33, 58 in Block 2 and all right, title and interest of the Declarant in and to such Lots ("Common Area Lots"), to Pinnacle Homeowners Association Inc. ("Association"). In addition, unless otherwise provided in the Amended and Restated Supplemental Declaration or by separate agreement with an applicable governmental or quasi-governmental agency, the Declarant shall transfer title to any Improvement, equipment, property or system on the Common Area Lots to the Association.
- (b) **Duty to Maintain Common Area Lots.** After the conveyance by the Declarant to the Association of fee title and/or control of the Common Area Lots, except as otherwise provided in the Amended and Restated Supplemental Declaration or by separate agreement with an applicable governmental or quasi-governmental agency, the Association shall be responsible for maintaining the Common Area Lots and all improvements, including landscaping, thereon.
- (c) **Liability for Damage.** In the event that any maintenance, repair or replacement of all or any portion of the improvements, including landscaping, located on a Common Area Lot is performed by the Association as a result of the willful or negligent act of an Owner, an Owner's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in the Amended and Restated Supplemental Declaration.

- (d) **Cost of Maintenance, Repairs and Replacement.** The cost of the maintenance, repairs and replacements of the improvements, including landscaping, located on the Common Area Lots, and the continuing operational expenses, if any, including taxes, shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within all Lots within Apex Northwest Subdivision No. 1 which are subject to the Amended and Restated Supplemental Declaration. Such costs and expenses (hereafter "costs and expenses") shall be apportioned on an equal basis among the Lots within Apex Northwest Subdivision No. 1, which are subject to the Amended and Restated Supplemental Declaration. In the event the Association does not have adequate funds to pay the costs and expenses deemed by the Association to be required with respect to the Common Area Lots, the deficiency shall be assessed to each Lot within Apex Northwest Subdivision No. 1, which is subject to the Amended and Restated Supplemental Declaration, on an equal basis, as a Special Assessment.

The decision as to what costs and expenses are required with respect to the maintenance, repairs and replacements of the improvements, including landscaping, located on the Common Area Lots shall rest solely with the Board of the Association.

- (e) **Easement for Maintenance.** There is hereby reserved to the Declarant and the Association, and their contractors and agents, an easement to enter upon the Lots within the Annexed Property for the purpose of accomplishing all maintenance, repair and replacement rights and duties set forth in this Article.
- (f) **Reserve for Maintenance, Repair and Replacement.** The Association shall have the right to establish a reserve account for the payment of the costs and expenses as set forth herein with regard to the maintenance, repair and replacement of the Common Area Lots and for the purpose of funding the same, the Board of the Association shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment so determined for the purpose of funding the maintenance, repair and replacement reserve account shall be determined by the Board of the Association. The Board of the Association shall have the right to place all funds collected for the maintenance, repair and replacement reserve account in an insured interest-bearing account in an approved financial institution.

ARTICLE IV. LEASING

For Residences in **Apex Northwest Subdivision No. 1 only**, "Section 5.05 Leasing" of the Supplemental Declaration is voided and replaced with the following language:

"Section 5.05 Leasing, "leasing" is the regular, exclusive occupancy of a Residence by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee. Any Owner who leases their Residence shall have the leasing of the Residence managed by a local professional management company. The following specific limitations shall apply to all leases or tenancies of a Residence:

- (a) No Residence may be leased for a term of less than six (6) months,
- (b) The lease must be to a single family,
- (c) The lease or rental must be for the entire Residence (e.g., separate rooms within the same dwelling may not be separately leased),
- (d) All leases shall be in writing, contain the contact information for the professional management company managing the lease and must require that tenants and all occupants of the leased Residence are bound by and obligated to comply with the Governing Documents including, but not limited to the requirements of Section 5.02(a) above, and that any failure of a tenant to comply with the terms of any Governing Document, residential leases, property use restrictions and the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement, and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice.

The Owner-lessor's right to terminate a lease on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association, the Declarant or any Owner to enforce the Governing Documents in accordance with this Article 5 when the Owner's tenant is violating the Governing Documents. Within ten (10) days of a lease being signed, an Owner shall notify the Board or the Association of the lease and provide any additional information the Board may reasonably require, including documentation to verify the age of each occupant and contact information for the professional management company managing the lease. The Owner must give the tenant copies of the Governing Documents. In addition to this sub-section, the Association may adopt Use Restrictions, and the Board may adopt reasonable Board Rules and Regulations, governing leasing and subleasing, including limiting the number of Residences that may be leased within the Property."

ARTICLE V.
OWNERS ASSOCIATION

As provided in Section 12.01 of the Amended and Restated Supplemental Declaration, upon the annexation of the Annexed Property, the Owners of the Lots within the Annexed Property shall become members of the Association with all rights, privileges and obligations as all other members.

ARTICLE VI.
CONFLICTS

Any conflict between the terms of the Amended and Restated Supplemental Declaration and the provisions of this First Amendment shall be controlled by this Amendment.

ARTICLE VII.
EFFECTIVE DATE

This First Amendment shall be effective from and after the date it is recorded in the official Records of Ada County, Idaho.

IN WITNESS WHEREOF, the undersigned, being the Declarant under the Amended and Restated Supplemental Declaration, and pursuant to Section 12.01 of the Amended and Restated Supplemental Declaration, has hereunto executed this First Amendment as of the date and year Amendment above written.

DECLARANT:

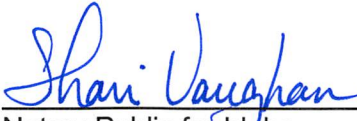
SMITH BRIGHTON INC.,
an Idaho corporation

By: 
Robert L. Phillips, Chief Operating Officer

STATE OF IDAHO)
) ss:
County of Ada)

On this 28th day of September, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert L. Phillips, known or identified to me to be the Chief Operating Officer of SMITH BRIGHTON INC., an Idaho corporation, and the person who subscribed said Corporation's name to the foregoing instrument as the Chief Operating Officer of said Corporation, and acknowledged to me that he executed the same in said Corporation's name.

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


Notary Public for Idaho
My Commission Expires: 6-1-2024

(SEAL)

