

**SECOND AMENDMENT TO AMENDED AND RESTATED SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
APEX SUBDIVISION
(Annexation – Apex Southeast Subdivision No. 2)**

September 20, 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. 2022-028701 on March 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 Second 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 20 through and including 42, Block 3; Lots 19 through and including 30, Block 7; Lots 1 through and including 15, Block 8; Lots 1 through and including 15, Block 9; Lots 1 through and including 6, Block 10; Lots 1 through and including 28, Block 11; Lots 1 through and including 8, Block 12, APEX SOUTHEAST SUBDIVISION NO. 2, according to the official plat thereof filed in Book 124 of Plats at Pages 19803 through and including 19808, inclusive, as Instrument No. 2022-080747 on September 21, 2022, records of Ada County, Idaho.

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ARTICLE II.
DEFINED TERMS

Unless the context otherwise specifies or requires, the words and phrases in this Second 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 24, 25, 31, 36, 37 and 42, Block 3; Lots 23, 24 and 30, Block 7; Lots 1, 8 and 15, Block 8; Lots 1, 8 and 15, Block 9; Lot 1, Block 10; Lots 1, 7, 8, 13 and 18, Block 11 and Lots 1 and 8, Block 12 and all right, title and interest of the Declarant in and to such Lots ("Common Area Lots"), to Apex Master Association ("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 Southeast Subdivision No. 2 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 Southeast Subdivision No. 2, 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 Southeast Subdivision No. 2, 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. 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 V.
CONFLICTS

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

ARTICLE VI.
EFFECTIVE DATE

This Second 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 Second Amendment as of the date and year Amendment above written.

DECLARANT:

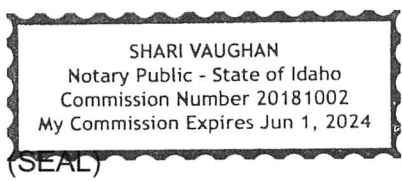
SMITH BRIGHTON INC.,
an Idaho corporation

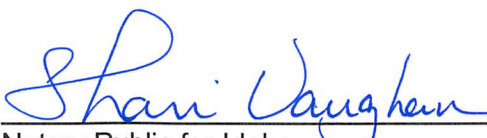
By: 
Robert L. Phillips, Chief Operating Officer

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