



**FIRST AMENDMENT TO MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
ASHBURY PROPERTY  
(Water and Irrigation)**

April 11, 2014

**RECITALS**

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Ashbury Property dated December 17, 2013, recorded as Instrument No. 113134367 on December 17, 2013, in the records of Ada County, Idaho ("Master Declaration");

WHEREAS, Section 12.02(b) of the Master Declaration allows for amendment of the Declaration by a majority of all of the votes of Class B Members;

WHEREAS, Declarant is the sole Class B Member and holds 100% of the Class B Member votes;

WHEREAS, Declarant desires to amend the Master Declaration to further describe the management of water and irrigation within the Property and hereby amends the Declaration accordingly based on the terms and conditions contained herein.

**DECLARATION**

Declarant hereby declares the Property and each Lot therein is and shall be held, sold and conveyed subject to this First Amendment, effective as of the date of recording of this Amendment:

1. The Declaration is amended to add the following as a new Article XIII:

**ARTICLE XIII  
WATER AND IRRIGATION**

**SECTION 13.01 Water.** Declarant hereby reserves unto itself, and owns and controls, any and all Water Rights appurtenant to and/or related to the Property. Accordingly, an Owner of a Lot shall have no right, title or interest in any Water Rights for the Property and/or its Lot unless and until Declarant conveys such water rights to the Association and/or Owners as determined in its sole discretion. As used herein, the term "Water Rights" means any and all

**FIRST AMENDMENT TO MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
ASHBURY PROPERTY  
(Water and Irrigation)**

April 11, 2014

**RECITALS**

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Ashbury Property dated December 17, 2013, recorded as Instrument No. 113134367 on December 17, 2013, in the records of Ada County, Idaho ("Master Declaration");

WHEREAS, Section 12.02(b) of the Master Declaration allows for amendment of the Declaration by a majority of all of the votes of Class B Members;

WHEREAS, Declarant is the sole Class B Member and holds 100% of the Class B Member votes;

WHEREAS, Declarant desires to amend the Master Declaration to further describe the management of water and irrigation within the Property and hereby amends the Declaration accordingly based on the terms and conditions contained herein.

**DECLARATION**

Declarant hereby declares the Property and each Lot therein is and shall be held, sold and conveyed subject to this First Amendment, effective as of the date of recording of this Amendment:

1. The Declaration is amended to add the following as a new Article XIII:

**ARTICLE XIII  
WATER AND IRRIGATION**

**SECTION 13.01 Water.** Declarant hereby reserves unto itself, and owns and controls, any and all Water Rights appurtenant to and/or related to the Property. Accordingly, an Owner of a Lot shall have no right, title or interest in any Water Rights for the Property and/or its Lot unless and until Declarant conveys such water rights to the Association and/or Owners as determined in its sole discretion. As used herein, the term "Water Rights" means any and all

water and water rights, including, but not limited to, surface rights, groundwater and groundwater rights, pressurized and/or gravity irrigation rights and water, ditch and ditch rights, and storage and storage rights appurtenant to the Property and/or Lots, including, but not limited to water licenses, permits, shares, and/or certificates.

**SECTION 13.02 Irrigation System.** Declarant has or will construct an Irrigation System (as defined below) stubbed onto each Lot within the Property. The Association shall manage all easements, equipment and facilities which comprise the Irrigation System. Each Owner shall pay for irrigation water and maintenance, repair and replacement of the Irrigation System as part of its Regular, Limited and/or Special Assessments. The Association shall have the obligation to maintain, repair or replace the portions of the Irrigation System which constitute the "main" distribution lines to and including the connection/shut-off valve located on each Lot within the Property, except for as provided in Section 13.04 below. After the construction/installation of the extension of the Irrigation System on a Lot, neither the Declarant nor the Association shall have any obligation to maintain, repair or replace any portion thereof which is extended on a Lot beyond the connection/shut-off valve located on the Lot, such obligation to maintain, repair or replace the same being that of the Owner of the Lot on which it is extended. As used herein, the term "Irrigation System" means those facilities and systems for the transmission of pressurized irrigation and/or gravity irrigation to the Property and each Lot therein, which may include, but is not limited to, water mains, pump house, pipe delivery system, electrical conduits or systems, diversion structure, irrigation and control structure, delivery piping, manhole structures, sedimentation ponds, amenity ponds, pressure irrigation intake piping, pond overflow structure, overflow ditch, and/or other public utilities, with private utilities and governmental entities providing service or services to one or more the Lots in common. The Irrigation System is an "Improvement" as defined in this Declaration.

**SECTION 13.03 Water Not Guaranteed; Rules and Regulations.** The Property is located in a semi-arid area. Irrigation water is not always reliable and such water is not unlimited. Irrigation water may not be available due to, without limitation, drought, harsh weather conditions, government actions, system breakdowns, transmission failures, overuse by Owners or any other causes. No Lot in this Property shall have any right to, or assurance of, a continuous or unlimited supply of irrigation water from the Irrigation System. Nor is any Lot guaranteed enough water from the Irrigation System to irrigate all of the landscaping on the Lot. Each Owner assumes the risk of any water shortage, and in the event that there is a water shortage, each Owner must be prepared to use an alternate water supply, if any. Each Lot shall be subject to, and each Owner, by accepting a deed to a Lot, agrees to be bound by and comply with, any rules or regulations which may be established for the use and rotation of irrigation water between the Lots by the Association. The Association shall have the power to promulgate rules and regulations regarding the use and operation of the Irrigation System, including, but not limited to, the days and times of delivery or use of water to each Lot or the temporary interruption or rationing of irrigation water to be delivered to the Lots, which rules and regulations shall be binding upon each Owner. Each Owner, by the acceptance of a deed to a Lot within the Property, acknowledges that neither the Declarant nor the Association shall be responsible for any interruption or rationing of the delivery of irrigation water to such Owner's Lot if such interruption or rationing results from a cause or condition outside the control of the Declarant and/or the Association, including, but not limited to, an insufficient amount of irrigation water being delivered to the Property or the temporary failure of the equipment or facilities of the Irrigation System. All Owners and occupants shall follow said

water rotation schedules and any rules promulgated relative to the use of irrigation water. Failure to adhere to the rotation schedule or rules may result in suspension of the right to use irrigation water.

**SECTION 13.04. Liability for Damage.** In the event that any maintenance, repair or replacement of all or any portion of the Irrigation System is performed by the Association as a result of the negligent or willful act of an Owner or Occupant, or an Owner's or Occupant's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by the Owner or the Occupant to the Association and/or the Association may assess the cost of the same, together with interest, related expenses, including attorney fees, shall be billed to the Owner of the Lot and, if not paid in full within ten (10) days, shall be assessed as a Limited Assessment and collected as set forth herein.

**SECTION 13.05. Cost of Maintenance, Repairs, Replacement and Insurance.** The cost of the maintenance, repairs, replacement and insurance of the Irrigation System and the continuing operational expenses, if any, including taxes (hereafter "Irrigation System Expenses"), shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within the Property. Such Irrigation System Expenses shall be apportioned among the Lots within the Property on an equitable basis. In the event the Association does not have adequate funds to pay the Irrigation System Expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot on an equal basis, as a Special Assessment.

The decision as to what costs and expenses are to be included in the Irrigation System Expenses and the timing of the payment thereof shall rest solely with the Board.

**SECTION 13.06. Easement for Maintenance.** There is hereby reserved to the Association, its contractors and agents, an easement to enter upon the Lots within the Property for the purpose of accomplishing all maintenance, repair and replacement rights and duties with respect to the Irrigation System as set forth in this Article.

**SECTION 13.07. Reserves.** The Association shall have the right to establish a reserve account for the payment of the Irrigation System Expenses and, for the purpose of funding the same, the Board 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 Irrigation System Expenses and a reserve account relating thereto shall be determined by the Board. The Board shall have the right to place all funds collected for the Irrigation System Expenses in an interest-bearing account in an appropriate financial institution.

**SECTION 13.08 Irrigation Agreements.** It is understood that the Declarant or the Association shall have the right to enter into a contract with the owner(s) of real property adjacent to or in the vicinity of the Property (hereafter "Adjacent Property") for the use of the Irrigation System to provide irrigation water to such Adjacent Property, such contract to be upon terms and conditions as shall be approved by the Association and, so long as the Declarant owns a Lot within the Property, the Declarant. Any payment by the owner(s) of the Adjacent Property to the Declarant or the Association for a portion of the initial construction/installation costs of the Irrigation System paid by the Declarant shall be the property of the Declarant but any payment to the Declarant or the Association for continuing

operating expenses of the Irrigation System shall be the property of the Association and shall be used, to the extent available, to reduce the continuing operating expenses of the Irrigation System which are to be included in the Regular Assessments levied by the Association.

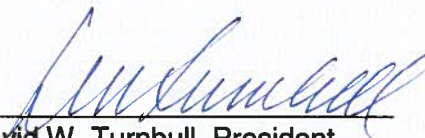
2. Any capitalized terms not defined in this Amendment shall have the same meaning as in the Declaration. Any conflict between the terms of the Master Declaration and the provisions of this First Amendment shall be controlled by this First Amendment.

[END OF TEXT]

IN WITNESS WHEREOF, the undersigned has executed this First Amendment as of the date and year first above written.

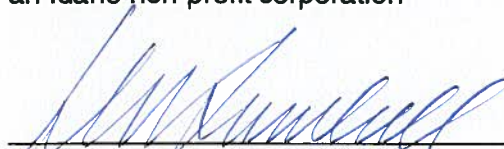
**DECLARANT:**

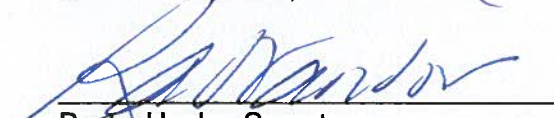
SMITH BRIGHTON INC.,  
an Idaho corporation

By:   
David W. Turnbull, President

Smith Brighton Inc., is hereby certified as 100%  
of the Class B Votes:

ASHBURY OWNERS ASSOCIATION INC.,  
an Idaho non-profit corporation

  
David W. Turnbull, President

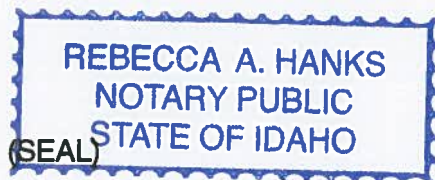
  
Becky Hanks, Secretary



STATE OF IDAHO     )  
                                      ) ss:  
County of Ada         )

On this 11th day of April, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared David W. Turnbull, known or identified to me to be the President of SMITH BRIGHTON INC., an Idaho corporation, and the person who subscribed said Corporation's name to the foregoing instrument as the President 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 first above written.

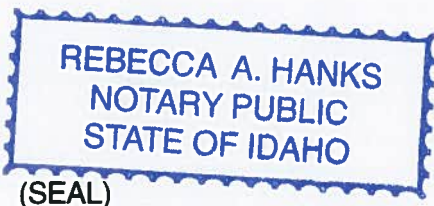


[Signature]  
Notary Public for Idaho  
My Commission Expires: 10.6.2017

STATE OF IDAHO     )  
                                      ) ss:  
County of Ada         )

On this 11th day of April, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared David W. Turnbull, known or identified to me to be the President of ASHBURY OWNERS ASSOCIATION INC., an Idaho non-profit corporation, and the person who subscribed said Corporation's name to the foregoing instrument as the President 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 first above written.



[Signature]  
Notary Public for Idaho  
My Commission Expires: 10.6.2017

STATE OF IDAHO     )  
                                  ) ss:  
County of Ada         )

On this 11th day of April, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Becky Hanks, known or identified to me to be the Secretary of ASHBURY OWNERS ASSOCIATION INC., an Idaho non-profit corporation, and the person who subscribed said Corporation's name to the foregoing instrument as the President 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 first above written.



\_\_\_\_\_  
Notary Public for Idaho  
My Commission Expires: 1.24.17

