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**SECOND AMENDMENT TO MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
ASHBURY SUBDIVISION  
(Annexation – Ashbury Subdivision No. 2)**

SEPT. 8<sup>th</sup>, 2014

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**RECITALS**

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Ashbury Subdivision dated December 17, 2013, recorded as Instrument No. 113134367 on December 17, 2013, in the records of Ada County, Idaho ("Master Declaration"), and that certain First Amendment to Master Declaration of Covenants, Conditions, Restrictions and Easements for Ashbury Subdivision dated April 11, 2014, recorded as Instrument No. 114028297 on April 15, 2014, in the records of Ada County, Idaho (collectively "Master Declaration");

WHEREAS, Section 11.01 of the Master Declaration allows for Declarant's annexation of additional property to the Subdivision, which additional property, when annexed, is brought within the provisions of the Master Declaration; and

WHEREAS, the purpose of this Second 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 Master Declaration, and to supplement the Master 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 Master Declaration is the real property owned by Smith Brighton Inc., an Idaho corporation, the Declarant, and is described as follows (hereafter "Annexed Property"):

**Lots 2 through and including 7, Block 4; Lots 29 through and including 45, Block 5; Lots 1 through and including 27, Block 8; Lot 1, Block 9; Lots 1 through and including 24, Block 10; Lots 1 through and including 12, Block 11; ASHBURY SUBDIVISION NO. 2, according to the official plat thereof filed in Book 107 of Plats at Pages 14873 through and including 14877, inclusive, as Instrument No. 2014-072810 on SEPTEMBER 8<sup>th</sup>, 2014, records of Ada County, Idaho.**

**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 Master Declaration.

**ARTICLE III.**  
**ANNEXATION**

Pursuant to Section 11.01 of the Master Declaration, the Declarant hereby declares that the Annexed Property is annexed to the Property, and brought within the provisions of the Master Declaration, and is hereby made part of the "Subdivision" and "Property", subject to all of the covenants, conditions, restrictions and easements of the Master 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 Lot 2, Block 4; Lots 29, 30, 37, Block 5; Lot 1, Block 8; Lot 1, Block 9; Lot 1, Block 10; Lots 1, 12, Block 11, and all right, title and interest of the Declarant in and to such Lots ("Common Area Lots"), to Ashbury Owners Association Inc. ("Association"). In addition, unless otherwise provided in the Master 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 Master 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 Master 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 Ashbury Subdivision which are subject to the Master Declaration. Such costs and expenses (hereafter "costs and expenses") shall be apportioned on an equal basis among the Lots within Ashbury Subdivision which are subject to the Master 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 Ashbury Subdivision which is subject to the Master 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 11.01 of the Master 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 Master Declaration and the provisions of this Second Amendment shall be controlled by this Second 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.

[END OF TEXT]

IN WITNESS WHEREOF, the undersigned, being the Declarant under the Master Declaration, and pursuant to Section 11.01 of the Master Declaration, has hereunto executed this Second Amendment as of the date and year first above written.

**DECLARANT:**

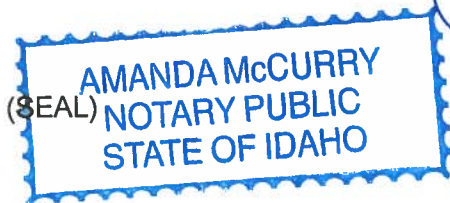
SMITH BRIGHTON INC.,  
an Idaho corporation

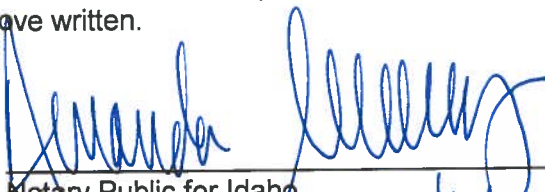
By:   
David W. Turnbull, President

STATE OF IDAHO     )  
                              ) ss:  
County of Ada        )

On this 8<sup>th</sup> day of August, 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.



  
Notary Public for Idaho  
My Commission Expires: 4/15/2017