

**FIFTH AMENDMENT TO MASTER DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HOMESTEAD SUBDIVISION
AKA
LANEWOOD SUBDIVISION
(Annexation – Lanewood Subdivision No. 6)**

October 8th, 2020

RECITALS

WHEREAS, Smith Brighton Inc., an Idaho corporation, as Declarant, recorded that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Homestead Subdivision a.k.a. Lanewood Subdivision dated February 8, 2017, recorded as Instrument No. 2017-012681 on February 10, 2017, in the records of Ada County, Idaho, as may be amended from time to time (collectively "Master Declaration");

WHEREAS, Section 12.01 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, pursuant Article XIV, Section 14.02(b), the Declarant desires to amend the Master Declaration to provide the Association the power to enforce the terms of the Master Declaration by imposing fines, consistent with Idaho Code §55-115.

WHEREAS, the purpose of this Fifth 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. This amendment shall be effective as to all current and future phases.

**ARTICLE I.
PROPERTY COVERED**

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

Lots 25 through and including 26, Block 7; Lots 7 through and including 20, Block 11; Lots 1 through and including 15, Block 12; Lots 1 through and including 18, Block 13; Lots 1 through and including 6, Block 14; Lot 1, Block 15 and Lots 1 through and including 9, Block 16 of LANEWOOD SUBDIVISION NO. 6, according to the official plat thereof filed in Book 119 of Plats at Pages 18393 through and including 18398, inclusive, as Instrument No. 2020-134318 on October 1, 2020, records of Ada County, Idaho.

**ARTICLE II.
DEFINED TERMS**

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

ARTICLE III.

ANNEXATION

Pursuant to Section 12.01 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 25, Block 7; Lots 11 and 20, Block 11; Lots 1 and 15, Block 12; Lot 18, Block 13; Lots 1 and 5, Block 14; Lots 1, 4 and 8, Block 16, and all right, title and interest of the Declarant in and to such Lots ("Common Area Lots"), to Homestead 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 Homestead (Lanewood) 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 Homestead (Lanewood) 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 Homestead (Lanewood) 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.
- (g) **Storm Drainage.** The Annexed Property contains a storm drain system which may consist of sand and grease traps, seepage beds, curb and gutters, inlets, retention ponds, storm drain manholes and pipes. The Ada County Highway District is responsible to maintain the storm drain system within the public right-of-way and easements shown on the recorded Plat (ACHD ROW Areas). The Association shall maintain the storm drain facilities located within Storm Water Area (as defined in the Master Declaration), including the storm drain pond and infiltration basins located in a Common Lot located in Lot 4, Block 16 of the Annexed Property, in accordance with the Stormwater Facility Operation and Maintenance Plan prepared by CK Engineering, P.C., dated June 9, 2020. **The primary purpose of the Storm Water Areas is for the management of storm water. All recreational, aesthetic and other uses of these areas are secondary.** Any additions to the Storm Water Areas or ACHD ROW Areas (such as benches or additional landscaping) require the prior approval and license agreement with ACHD and, if approved, should be considered temporary and will not be replaced if removed by ACHD when heavy maintenance of the Storm Water Area is required. ACHD has the right to inspect such facilities in the Storm Water Areas and/or ACHD ROW Areas which affect ACHD, and if necessary, perform any required maintenance or repairs. ACHD has the right to assess the Association for the costs of any required maintenance or repairs where the Association or Owner (pursuant to Section 5.26 of the Master Declaration) has failed to adequately maintain the ACHD ROW Areas or Storm Water Areas which affect ACHD that are part of the storm water treatment/detention area(s) within the Subdivision. Any changes or modifications to the Storm Water Areas above and beyond the improvements shown on the ACHD approved storm drain plans for the Subdivision which affect ACHD require the prior approval of ACHD. Notwithstanding the above, the Property may contain additional drainage facilities owned or managed by a governmental or quasi-governmental entity other than ACHD, as may be necessary for the development of the Property as determined by Grantor.

ARTICLE IV.
OWNERS ASSOCIATION

As provided in Section 12.01 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 Fifth Amendment shall be controlled by this Fifth Amendment.

ARTICLE VII.
EFFECTIVE DATE

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

