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BOOK 1626 PAGE 0053

Index in Grantee Index under:
"Briar Chapel" and "Briar Chapel Community Association, Inc.

Index in Grantor Index under:
"NNP-Briar Chapel, LLC"

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NOTE TO CLERK: Please Cross-Reference to:
Declaration at Book 1372
Page 884

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

**FIFTH AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIAR CHAPEL**

This Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Briar Chapel ("**Amendment**") is made by NNP-Briar Chapel, LLC, a Delaware limited liability company (the "**Declarant**").

Background Statement

The Declarant is the developer of the planned community located in Chatham County, North Carolina known as Briar Chapel. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Briar Chapel recorded November 16, 2007 in Deed Book 1370, Page 1020, *et seq.*, re-recorded November 28, 2007 in Deed Book 1372, Page 884, *et seq.*, which has been amended by those instruments recorded in the Office of

the Register of Deeds of Chatham County, North Carolina on June 12, 2009 in Deed Book 1465, Page 482, *et seq.* ("**First Amendment**"), on June 19, 2009 in Deed Book 1466, Page 675, *et seq.* ("**Second Amendment**"), on August 20, 2010 in Deed Book 1525, Page 464, *et seq.* ("**Third Amendment**"), and on January 19, 2011 in Deed Book 1550, Page 121, *et seq.* ("**Fourth Amendment**") (as now and hereafter amended and supplemented, the "**Declaration**").

Pursuant to Section 19.1 of the Declaration, the Declarant reserved the right to unilaterally amend the Declaration for any purpose until termination of the Class "B" Control Period (as defined in the Declaration); provided, any such unilateral amendment shall not materially adversely affect the allocation of voting rights or assessment burdens among the Units or title to any Unit without the written consent of the Owner of the affected Unit.

The Class "B" Control Period has not yet terminated and the Declarant desires to amend the Declaration to restrict parking within the Community and to provide for further regulation of parking pursuant to the rulemaking authority in the Declaration.

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows, to be effective as of the date of recording of this Amendment in the Office of the Register of Deeds for Chatham County, North Carolina:

1.

Article III is amended by adding the following new section to the end of that Article (immediately following Section 3.5 as added by the Second Amendment and modified by the Third Amendment):

3.6. Parking.

(a) Within Rights-of-Way. No automobiles, trucks, motorcycles, scooters, bicycles, trailers, or other vehicles of any kind (collectively, "**Vehicles**") shall be parked on public or private streets or alleys or in other rights-of-way within the Community at any time, except that:

(i) public safety and emergency Vehicles may be parked in the right-of-way while responding to an emergency call or otherwise in the course of their official duties; and

(ii) parking may be permitted in designated areas along private streets, but only to the extent so authorized by Board resolution from time to time.

(b) On Common Areas. No Vehicles shall be parked or left overnight on Common Areas except that occasional overnight guests of an Owner or occupant of a Unit may park their vehicles in those areas, if any, which the Board has designated for parking while staying overnight in the Unit. Vehicles parked on the Common Area may be parked only in spaces designated for parking, as may be indicated by signage and/or painted lines. Bicycles may be parked or placed on the Common Area only in bike racks provided by the

Association. Neither the Declarant nor the Association shall have any responsibility or liability for theft, vandalism, or other loss or damage to vehicles or contents of vehicles parked or left on Common Areas at any time.

(c) On Units. Vehicles parked on Units shall be parked only in the garage or carport or in the driveway of the Unit and then only to the extent permitted by the Rules and Restrictions, which may further restrict parking on Units.

Each Owner shall notify all occupants and guests of such Owner's Unit of, and shall be responsible for ensuring their compliance with, this Section 3.6.

2.

Article VII, Section 7.5, Compliance and Enforcement, is amended to read as follows:

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property;

(iv) towing or other removal of vehicles that are in violation of the parking restrictions and rules set forth in Section 3.6 or in the Restrictions and Rules, without prior notice or warning); and/or

(v) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIV, if applicable.

3.

Article XI, Section 11.5, Easements for Maintenance, Emergency and Enforcement, is amended by revising the first sentence to read as follows:

BRIAR CHAPEL COMMUNITY ASSOCIATION, INC.

PARKING RULES

The Rules and Restrictions attached as Exhibit "C" to the Declaration of Covenants, Conditions and Restrictions for Briar Chapel recorded in the Office of the Register of Deeds for Chatham County, North Carolina at Book 1372, Page 884, *et seq.* (the "Declaration") has been amended so that Paragraph 2(a) reads as follows:

2. Restricted Activities. The following activities are prohibited within Briar Chapel unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (a) Parking of vehicles in the Community (other than public safety and emergency vehicles while being used in their official capacities) in violation of any of the following parking rules:
- i. No vehicles shall be parked within the right-of-way of Great Ridge Parkway or Briar Chapel Parkway or in any alley within the Community.
 - ii. Mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, and inoperable vehicles, shall be parked only in enclosed garages, except temporarily during loading and unloading.
 - iii. Commercial vehicles shall be parked only in enclosed garages, except that construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or make a delivery to a Unit or a Common Area. The term "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors, or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies.
 - iv. Vehicles parked in the Briar Club or other Common Area parking lots shall be parked in marked spaces only and each vehicle shall be parked entirely within the lines designating a single space. No vehicle shall use more than one parking space and no more than one vehicle shall be parked in each space. No parking shall be permitted along curbs, in driving lanes, or in fire zones. Bicycles shall be placed only in bike racks and shall not be left in vehicle parking spaces. There shall be no overnight vehicle parking in the Briar Club or other Common Area parking lots. The Association, its managing agent, and NNP-Briar Chapel, LLC shall have no responsibility for theft, vandalism, or other loss or damage to vehicles, their contents, or other personal belongings while parked or left on Common Areas. All

drivers shall drive slowly and use caution when entering and exiting the parking area and must yield to pedestrians.

VEHICLES PARKED IN VIOLATION OF THE ABOVE PARKING RULES MAY BE TOWED WITHOUT PRIOR NOTICE AT THE OWNER'S EXPENSE PURSUANT TO THE AUTHORITY SET FORTH IN SECTION 7.5(c)(iii) OF THE DECLARATION. THE ASSOCIATION, ITS MANAGING AGENT, AND NNP-BRIAR CHAPEL, LLC SHALL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF TOWING OF VEHICLES PARKED IN VIOLATION OF THESE PARKING RULES.