

WAKE COUNTY, NC 42
CHARLES P. GILLIAM
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/14/2020 09:59:39

BOOK:018127 PAGE:00900 - 00906

Cross Reference: Book 18102, Page 1754

**PREPARED BY (Without Title Examination)
AND WHEN RECORDED RETURN TO:**

Jennifer L. Oxford, Esq.
Morningstar Law Group
421 Fayetteville Street, Suite 530
Raleigh, NC 27601

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BRIAR GATE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIAR GATE (this "First Amendment") is made and entered into as of the 7th day of October, 2020, by MATTAMY HOMES LLC, an North Carolina limited liability company ("Declarant"). The Briar Gate Neighborhood Association, Inc., a North Carolina non-profit corporation (the "Association") joins in this First Amendment to evidence its acknowledgement and consent to its terms.

RECITALS:

WHEREAS, Declarant entered into the Declaration of Covenants, Conditions and Restrictions for Briar Gate, dated September 29, 2020, and recorded September 30, 2020, at Book 18102, Page 1754 (the "Declaration"), in the Register of Deeds for Wake County, North Carolina (the "Registry"), concerning the real property located in Holly Springs Township, County of Wake, State of North Carolina, and commonly known as Briar Gate.

WHEREAS, Section 1.6 of the Declaration incorrectly recites the name of the Association as being "Briar Gate Homeowner's Association, Inc., a North Carolina non-profit" when it is in fact "Briar Gate Neighborhood Association, Inc., a North Carolina non-profit corporation";

WHEREAS, Section 15.2 of the Declaration provides that until the termination of the Class "B" Membership, the Declarant may unilaterally amend the Declaration for any purpose.

WHEREAS, Declarant owns all of the Property as described in the Declaration and also set forth on Exhibit A attached hereto and incorporated herein;

WHEREAS, the Class "B" membership has not yet terminated because Declarant owns all of the Lots and none of the Lots have been conveyed to Persons other than Builders;

WHEREAS, Declarant now desires to amend the Declaration upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above Recitals and the covenants contained in this First Amendment, Declarant hereby declares that the Declaration is hereby amended by this First Amendment and that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in the Declaration, as amended by this First Amendment, and the Declaration, as amended by this First Amendment, shall run with the title to the Property, and shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Property:

1. **Defined Terms; Recitals.**

(a) Except as otherwise specifically defined herein, all capitalized terms shall have the meanings assigned to such terms in the Declaration.

(b) The Recitals are hereby incorporated herein by this reference.

2. **Association Name Revised.**

Section 1.6 of the Declaration is hereby revised to delete the words "Briar Gate Homeowner's Association, Inc., a North Carolina non-profit" and replace with "Briar Gate Neighborhood Association, Inc., a North Carolina non-profit corporation".

3. **General Provisions.**

(a) **Binding Effect.** The obligations, burdens and benefits created by this First Amendment shall bind and inure to the benefit of all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns and transferees. This First Amendment and its terms and conditions shall become a part of the chain of title and shall run with the land until terminated, as more particularly set forth in the Declaration and this First Amendment.

(b) **Headings and Captions.** The headings and captions of the paragraphs of this First Amendment are for convenience of reference only and shall not affect the meaning or interpretation of this First Amendment or any provision thereof.

(c) **Gender and Number.** As used in this First Amendment, the neuter shall include the feminine and masculine, the singular shall include the plural, and the plural shall include the singular, except where expressly provided to the contrary.

(d) **Severability.** In the event that a paragraph, section, sentence, clause or phrase contained in this First Amendment becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this First Amendment shall not be affected thereby.

(e) **Full Force and Effect.** Except as expressly amended hereby, the Declaration remains unaltered and in full force and effect.

(f) **Governing Law.** This First Amendment and all questions concerning the performance of this First Amendment will be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of North Carolina, without reference to rules relating to choice of law.

(g) **Counterparts.** This First Amendment and any amendment to this First Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

(h) **Covenants Run with the Land.** Each and every declaration, covenant, condition, easement, right, privilege and restriction made, declared, granted or assumed in this First Amendment shall be an equitable servitude on the Property, and shall run with the land and shall be binding upon and inure to the benefit of any party and their respective successors, assigns and grantees who acquire fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure or otherwise.

4. **Association.**

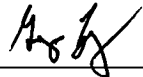
The Association joins in this First Amendment to evidence its acknowledgement and consent to the terms thereof.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has caused this First Amendment to be executed effective as of the day and year first above written.

“Declarant”

MATTAMY HOMES LLC,
an North Carolina limited liability company

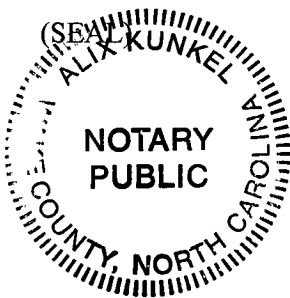
By: 

Name: George Young

Title: Vice President

STATE OF NORTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF WAKE)

I, the undersigned Notary Public of the County or City of WAKE and State aforesaid, certify that George Young, Vice President of Mattamy Homes LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged his due execution of the foregoing instrument for the purposes therein expressed in his capacity described therein. Witness my hand and Notarial stamp or seal this 7th day of October, 2020.




(Signature)

ALIX KUNKEL, Notary Public
(Print Name)

My Commission Expires: MARCH 29, 2025

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Association acknowledges and consents to this First Amendment as of the day and year first above written.

"Association"

**BRIAR GATE NEIGHBORHOOD
ASSOCIATION, INC.,**
a North Carolina non-profit corporation

By: *Geo YG*

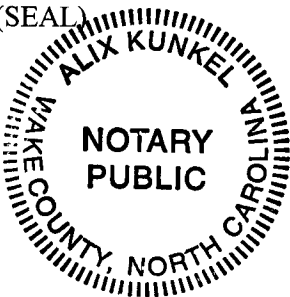
Name: George Young

Title: Director

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE) ACKNOWLEDGEMENT

I, the undersigned Notary Public of the County or City of WAKE and State aforesaid, certify that GEORGE YOUNG, DIRECTOR of Briar Gate Neighborhood Association, Inc., a North Carolina non-profit corporation, personally appeared before me this day and acknowledged his due execution of the foregoing instrument for the purposes therein expressed in his or her capacity described therein. Witness my hand and Notarial stamp or seal this 7th day of October, 2020.

(SEAL)



Alix Kunkel
(Signature)

ALIX KUNKEL, Notary Public
(Print Name)

My Commission Expires: MARCH 29 2025

EXHIBIT A
PROPERTY

Tract 1

Being all of that certain tract or parcel of land located in Wake County, North Carolina, and more particularly described as follows:

BEING ALL of that certain tract or parcel of land designated as "Tract E", containing 51.473+/- acres according to map entitled "Exempt Division and Recombination Survey for the Garland Powell Estate, Holly Springs Township, Wake County, North Carolina", prepared by Benton W. Dewar and Associates, Professional Land Surveyors and recorded in Book of Maps 2006, Page 2645, Wake County Registry.

AND

Tract 2

Being all of that certain tract or parcel of land located in Wake County, North Carolina, and more particularly described as follows:

BEING ALL of "New Lot 1: 22.950 Ac" as depicted on that survey entitled "Exempt Subdivision Plat for Reliabuilt, LLC, Lisa Powell and Larue Matthews Powell Pate" dated August 27, 2018 by Timmons Group and recorded in Book of Maps 2019, Page 485, reference to which is made for a greater certainty of description.

AND

Tracts 1 and Tracts 2 BEING THE SAME as those Lots 156 through 165, inclusive, Lot 174, Common Area #1, Common Area #2, the remainder acreage owned by Mattamy Homes LLC, and such roads, lanes, and ways, as shown on that certain plat entitled "Final Subdivision, Easement, and Right-of-Way Dedication Plat of Briar Gate Subdivision Phase 1 for Mattamy Homes, LLC" prepared by David S. Clark, PLS, for McKim & Creed, dated December 23, 2019, as recorded at Plat Book 2020, Pages 706, 707, 708, and 709, Wake County Registry.



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Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Charles P. Gilliam

Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp

☐ \$25 Non-Standard Fee

☐ Additional Document Fee

☐ Additional Reference Fee

This Customer Group

_____ # of Excessive Entities

_____ # of Time Stamps Needed

This Document

_____ 7 # of Pages *JM*