Misc: 18.50 - See Below
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
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FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF BRIAR HILLS, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITION, RESTRICTIONS AND EASEMENTS OF BRIAR HILLS, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA (the "Fifth Amendment") is made and entered into as of this 13 day of AUGUST, ~~2004~~ 2007 ("Effective Date") by the Briar Hills Homeowners Association, Inc., a Nebraska non-profit corporation (the "Association").

RECITALS

WHEREAS, the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, a Subdivision in Douglas County, Nebraska was recorded in the office of the Register of Deeds of Douglas County, Nebraska (the "Recorder's Office"), on July 27, 1998, in Miscellaneous Book 1257, Page 1 (the "Original Declaration"); and was amended by the First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, a Subdivision in Douglas County, Nebraska, recorded in the Recorder's Office on August 23, 2000 in Miscellaneous Book 1349, Page 187; and was amended by the Second Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, a Subdivision in Douglas County, Nebraska, recorded in the Recorder's Office on September 20, 2000 in Book 1352, page 156; and was amended by the Third Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, a Subdivision in Douglas County, Nebraska, recorded in the Recorder's Office on October 25, 2000 in Miscellaneous Book 1356, Page 287; and was amended by the Fourth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, a Subdivision in Douglas County, Nebraska, recorded in the Recorder's Office on October 24, 2000 in Miscellaneous Book 1469, Page 218 (the First Amendment through the Fifth Amendment, inclusive, are hereinafter collectively, the "Amendments") (the Amendments and the Original Declaration are hereinafter collectively, the "Amended Declaration"); and

WHEREAS, the Amended Declaration encumbers Lots 38 through 161, inclusive, Lots 190 through 295, inclusive, Lots 296 through ~~386~~ 319 and 320 to 386, inclusive, all in Briar Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Subdivision"); and *Lot 1 and 2 Briar Hills replat two fka 320 and 321 Briar Hills

Tranquility Realty LLC
15611 Harrison St.
Omaha, NE 68136

OC-04496

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WHEREAS, pursuant to the terms of the Amended Declaration, the Amended Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots in the Subdivision; and

WHEREAS, as more fully set forth in the Affidavit of Brian Frevert attached hereto as Exhibit "A" and incorporated herein by this reference, the owners of not less than seventy-five percent (75%) of the lots in the Subdivision have agreed to further amend the Amended Declaration upon the terms and conditions stated herein and have authorized the Association to act on their behalf in preparing, executing and recording this Fifth Amendment.

NOW, THEREFORE, for good and valuable consideration, the Association hereby declares as follows:

1. All capitalized terms not defined herein shall be defined and have the meanings set forth in the Amended Declaration.

2. Article I, Section 1 of the Original Declaration is hereby amended by inserting the following sentence at the end of said Section:

> Notwithstanding any provision contained herein to the contrary, Lot 331 may be used for "day care services (general)" and "day care services (limited)" as those terms are defined in Chapter 55 of the Omaha Municipal Code.

3. Article I of the Original Declaration is hereby amended by inserting the following Section:

> Section 22. No portion of Lot 164 shall be used as a gas station, convenience store, car wash, automotive repair shop, liquor store or other business selling beer or liquor for off-premises consumption, tobacco store or other business selling tobacco products for off-premises use or consumption or pawn shop. Lot 164 shall not be subject to any other covenant, condition or restriction contained in the Declaration or any amendments thereto other than this Section 22 of Article I.

4. Except as specifically amended herein, the Amended Declaration shall remain in full force and effect as originally executed. This covenants and restrictions of this Fifth Amendment shall run with and bind the land described herein and shall have the same legal effect as the Amended Declaration.

EXHIBIT A

AFFIDAVIT OF BRIAN FREVERT
PRESIDENT OF THE BRIAR HILLS HOMEOWNERS ASSOCIATION

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

COMES NOW the Affiant, Brian Frevert, after first being duly sworn, under oath and penalty of perjury states as follows:

1. Affiant is the duly elected President of the Briar Hills Homeowners Association ("BHHA").

2. On or about July 15, 2007 Affiant and other members of the BHHA collected the statutory number of signatures from Briar Hills homeowners in an effort to validate the Fifth Amendment of the Declaration of Covenants, Conditions, Restrictions and Easements of Briar Hills, A subdivision in Douglas County, Nebraska.

3. According to Douglas County Assessor's Office there are 386 lots subject to the Declaration of Covenants.

4. To change the Declaration of Covenants 75 percent of the lot owners must agree to the same. Seventy-five percent of the eligible lots is _290_ lots.

5. Attached hereto and incorporated herein by this reference are the executed Homeowners Certification and Consent Forms of _305__ homeowners.

6. The homeowners who have executed Homeowner Certification and Consent Agreements is in excess of seventy-five percent of the eligible lots.

7. Further, the Affiant sayeth naught.

Brian Frevert, Affiant

SUBSCRIBED AND SWORN to before me on this 13 day of August, 2007.

Notary Public

GENERAL NOTARY - State of Nebraska
MICHAEL R. SHRAMEK
My Comm. Exp. Oct. 25, 2008

GENERAL NOTARY - State of Nebraska
MICHAEL R. SHRAMEK
My Comm. Exp. Oct. 25, 2008

My Commision expires Oct. 25, 2008

GENERAL NOTARY - State of Nebraska
MICHAEL R. SHRAMEK
My Comm. Exp. Oct. 25, 2008

IN WITNESS WHEREOF, the Association has caused this instrument to be executed at Omaha, Douglas County, Nebraska, this 13 day of AUGUST, ~~2004.~~ 2007

BRIAR HILLS HOMEOWNERS ASSOCIATION,
a Nebraska non-profit corporation

By: _____
Briar Hills Homeowners President
Brian Frevert

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

~~2004~~ 2007, The foregoing instrument was acknowledged before me on August 13, ~~2004~~, by Brian Frevert, the president of Briar Hills Homeowners Association, a Nebraska non-profit corporation, on behalf of the corporation.

_____
Notary Public

GENERAL NOTARY- State of Nebraska
MICHAEL R. SHRAMEK
My Comm. Exp. Oct. 25, 2008

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My Commision exp. Oct. 25, 2008