

FILED  
CHATHAM COUNTY NC  
TREVA B. SEAGROVES  
REGISTER OF DEEDS

FILED Jun 19, 2009  
AT 02:31:33 pm  
BOOK 01466  
START PAGE 0675  
END PAGE 0682  
INSTRUMENT # 06738  
EXCISE TAX (None)

BOOK 1466 PAGE 0675

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

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

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

This Second 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.*, and amended by that instrument recorded on June 12, 2009 in Book 1465, Page 482, *et seq.*, in the Office of the Register of Deeds of Chatham County, North Carolina (as it may be 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 that any such unilateral amendment which materially adversely affects the allocation of voting rights or assessment burdens among the Units or title to any Unit shall require 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 limit leasing of Units in order to maintain the predominantly owner-occupied character of the community. Such amendment does not affect the allocation of voting rights or assessments among the Units or materially adversely affect title to any Unit.

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 changing the title of that Article to "Use and Conduct; Leasing."

2.

Article III, Section 3.4 is amended by deleting subsection (h) and inserting the following in its place:

(h) Alienation. No rule shall prohibit transfer of title to any Unit or require consent of the Association or Board for transfer of title to any Unit.

3.

Article III is amended by adding the following new section to the end of that Article:

3.5. Leasing of Units.

(a) Definition. "Leasing," as used in this Declaration, shall mean the regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(b) Restriction on Leasing. In order to maintain the predominantly owner-occupied character of the Community and facilitate the financing of Unit purchases, leasing of Units shall be prohibited except as specifically authorized in Section 3.5(c) and (d), and then subject to the conditions set forth in Section 3.5(e). Any leasing transaction which is not authorized under Section 3.5(c) or (d) shall be voidable at the option of the Board.

(c) Exemptions.

(i) Exemption for Certain Existing Homes. The following Units shall be exempt from the prohibition on leasing set forth in Section 3.5(b), but only so long as they are owned by the Owner who held title on the effective date of this Section 3.5 ("**Effective Date**"):

(A) Any Unit which was improved with a dwelling and owned by a Person other than the Declarant or a Builder on the Effective Date; and

(B) Any Unit improved with a dwelling and conveyed by a Builder within six months after the Effective Date pursuant to a contract executed by the Builder and the grantee on or before the Effective Date, if a copy of such contract was filed with the Board within 10 days after the Effective Date.

Notwithstanding the above, if a single Owner or a group of related or affiliated Owners (as the Board may determine) owns more than one Unit that would qualify for exemption under this subsection (c)(i), only the Unit for which the Board first received written notice of a lease shall be entitled to such exemption. If the Owner of a Unit initially exempt under this subsection (c)(i) is a legal entity, any change or series of changes in ownership of the entity involving more than 50% of the ownership interest of the legal entity shall constitute a change in ownership of the Unit for purposes of this subsection. Upon request of the Board, an Owner which is a legal entity shall provide an affidavit of ownership or other evidence acceptable to the Board establishing the true ownership of the entity.

(ii) Hardship Exemption. The Board may (but shall not be obligated to) allow leasing of a Unit not otherwise exempt under this Section 3.5(c) or authorized to lease under Section 3.5(d), if the Board deems it appropriate to avoid undue hardship to the Owner, including, but not limited to, a situation in which:

(A) the Owner who has been occupying the Unit must relocate his or her residence more than 30 miles from the Community and has been unable, within six months from the date that the Unit was placed on the market, to sell the Unit for a price no greater than the current appraised market value, after having made reasonable efforts to do so;

(B) the Owner who has been occupying the Unit dies and the Unit is being administered by his or her estate; or

(C) the Owner who has been occupying the Unit temporarily relocates and intends to return to reside in the Unit.

Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the

circumstances necessitating the leasing and such other information as the Board may reasonably require. Upon the Board's written approval of such application, the Owner may lease the Unit for such duration as the Board reasonably determines necessary to prevent undue hardship. Upon expiration of such authorized period, any lease of the Unit shall terminate unless the Owner has applied for and been granted an extension of the hardship exception, which may be granted or withheld in the Board's sole discretion.

(iii) Exemptions for Builders' Models. Any Unit which a Builder sells and leases back for the Builder's use as a model home shall be exempt from the restriction on leasing under Section 3.5(b) during the term of the Builder's lease or such period as the Builder continues to be engaged in construction and sale of homes in the Community, whichever is shorter (the "**Exemption Period**"), provided the Unit is maintained and used as the Builder's model home and is not occupied for residential purposes during such Exemption Period.

(iv) Exemption for Institutional Lenders. An institutional lender which acquires title to a Unit upon foreclosure of its first priority deed of trust on the Unit or by a deed in lieu of such a foreclosure may lease the Unit so long as owned by such lender; however, this subsection (c)(iv)) shall not permit leasing by any Owner, other than such lender, who purchases the Unit at a foreclosure sale or acquires title to the Unit from the lender subsequent to the foreclosure of a deed of trust or granting of a deed in lieu of foreclosure.

(d) Permission to Lease. Any Owner of a Unit which does not qualify for an exemption under subsection (c) and which is improved with a dwelling for which a certificate of occupancy has been issued ("**Non-Exempt Unit**") may submit a written request to the Board for permission to lease. The Board shall grant such request unless, at the time such request is considered, ten percent (10%) or more of the Non-Exempt Units in the Community have permission to lease pursuant to this subsection (d), in which case the Board shall deny such request and place the Unit on a waiting list for permission to lease. Such waiting list shall be maintained in the order in which the Association receives the Owners' applications for permission to lease hereunder.

At such time as the percentage of Non-Exempt Units which have permission to lease pursuant to this subsection (d) drops below 10%, the Board shall notify the Owner of the Unit at the top of the waiting list that such Owner has been granted permission to lease. The Owner shall have 90 days after the date of such notice within which to enter into a written lease agreement and provide a copy to the Board or the permission to lease shall expire. If a lease is executed within such initial 90-day period and, at any time thereafter, there is a period of more than 90 consecutive days in which the Unit is not occupied by a tenant pursuant to a lease which complies with this Section 3.5, permission to lease shall expire.

If the Board fails to respond to a written request for permission to lease within 30 days after receipt of such request, the Owner may give written notice to the Board by certified mail, return receipt requested, that the Owner intends to lease the Unit and, if such lease would not result in Owners of more than ten percent (10%) of the Non-Exempt Units in the Community having permission to lease pursuant to this subsection (d), then permission to lease shall be deemed granted effective as of the fifth (5<sup>th</sup>) day following the Board's receipt of such notice.

(e) Permitted Leasing. To the extent that leasing of a Unit is permitted under this Section 3.5, the leasing activity shall be subject to the following:

(i) No signs advertising the Unit for rent or lease or otherwise indicating that the Unit is available for rent or lease shall be permitted within the Community or on public rights-of-way adjacent to the Community.

(ii) All leases shall be in writing and, except in the case of lease entered into prior to the Effective Date and exempt under Section 3.5(c)(i), shall be in a form specified or approved in advance by the Board. All leases entered into prior to the Effective Date shall have an initial term of at least 6 months and all leases entered into after the Effective Date shall have an initial term of at least 12 months, unless the Unit is being leased pursuant to an exemption under Section 3.5(c), in which case the term of the lease shall expire no later than termination of the exemption. If the lease is terminated or the persons occupying the Unit under the lease vacate the Unit within the initial term required hereunder, the Unit may not be leased or subleased to another lessee until expiration of such minimum initial term, unless otherwise approved in advance by the Board.

(iii) Units may be leased only in their entirety; no fraction, portion, or rooms constituting less than the entire Unit may be leased.

(iv) Prior to the effective date of a lease, the Owner of the Unit to be leased shall deliver to the Association written notice of intent to lease, together with a copy of the proposed lease, the name of the lessee and all other people occupying the Unit, and such additional information as the Board may require. The Board may reject the proposed lease by written notice to the Owner within 10 days after receipt of the Owner's notice of intent to lease, if the Board or its designee determines that the Unit is not eligible to be leased under this Section 3.5 or the proposed lease is not in an acceptable form. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. If the Board does not reject the proposed lease by written notice to the Owner within such 10 day period, the lease shall be deemed acceptable.

The notice of any lease entered into after the Effective Date shall also be accompanied by a fee ("**Administrative Lease Fee**") in such reasonable amount as the Board may establish from time to time, to help fund anticipated costs of processing lease applications, updating resident records, issuing

identification cards to the occupants of leased Units, and other administrative burdens associated with leasing. The Board may also require payment of a deposit for each identification card, key or other form of pass issued to the occupants of the leased Unit to permit access to recreational facilities, which deposit shall be refunded if the item is returned in usable condition upon termination of the lease.

(v) There shall be no subleasing of Units or assignment of leases without prior written approval of the Board.

(vi) The Owner of a leased Unit shall provide to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules prior to the lessee entering into any agreement to lease a Unit.

(vii) Every lease of a Unit entered into after the Effective Date of this Section 3.5 shall be deemed to contain the following provisions, whether or not expressly stated therein:

Contingency for Board Verification. The lessee acknowledges that, notwithstanding the effective date or lease term set forth in this lease, this lease shall not take effect unless and until submitted to the board of directors of Briar Chapel Community Association, Inc. for verification of the lessor's eligibility to lease the premises and that the lease is in an acceptable form.

Compliance With Governing Documents. The lessee acknowledges receipt of a copy of the Declaration of Covenants, Conditions, and Restrictions for Briar Chapel and the other governing documents referenced therein ("Governing Documents") and agrees to comply with the Governing Documents and to control the conduct of all other occupants and guests of the leased premises in order to ensure their compliance. Any violation of the Governing Documents by the lessee, any person residing in the Unit, or any guest of the lessee or other members of the lessee's household shall constitute a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to Briar Chapel Homeowners Association, Inc., acting through its board of directors, the power and authority to enforce this provision against the lessee, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof.

(viii) In the event the Association proceeds to evict a lessee pursuant to the foregoing provision, any costs, including attorney's fees and court costs,

associated with the eviction shall be an assessment against the Unit, secured by the Association's lien under Section 8.6 of the Declaration.

(ix) The Owner of a leased Unit shall be responsible for any violations of the Governing Documents by the lessee or other occupants of the Unit, notwithstanding that the lessee and occupants are fully liable and may be sanctioned for their violations. In the event that the Association imposes a fine for violation of the Governing Documents by the lessee or occupants of the leased Unit, the Association shall give notice to the Owner and the lessee and the Owner shall be responsible for payment if the lessee fails to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(x) When an Owner who is leasing his or her Unit is more than 30 days delinquent in paying any assessment or other charge due to the Association, then the delinquent Owner shall be deemed to have assigned to the Association the right, at the Association's option, to collect any rents due from the lessee during the period of such delinquency, and, upon the Board's written request to the lessee, the lessee shall pay to the Association all rents otherwise payable under the lease up to the amount of such delinquency. The lessee need not make such payments to the Association in excess of, or prior to the due dates for, periodic rental payments unpaid at the time of the Board's request. Notwithstanding anything to the contrary in the lease, all such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. The Association may, but shall have no duty to, exercise its rights under this subparagraph (x) or take legal action to collect rents from any lessee pursuant to this subparagraph, and nothing in this subparagraph shall be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she is otherwise responsible.

(xi) The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to:

(A) Units leased to Declarant or any Builder authorized by Declarant for use as model homes or sales offices, or to the continued leasing of such Units by the same Owner after expiration of any such lease if Declarant or Builder does not offer to renew or extend the lease on substantially similar terms; or

(B) the leasing of Units by an institutional lender following foreclosure on any Unit(s).

4.

Exhibit "C," Initial Restrictions and Rules, is amended by deleting Paragraph 4 in its entirety.

In witness of the foregoing, the Declarant has executed this Amendment on the 17<sup>th</sup> day of JUNE, 2009.

**DECLARANT:** NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company

By: [Signature]  
Name: Keith Hurand  
Its: Vice President

STATE OF NORTH CAROLINA )  
COUNTY OF Orange )

I, Catherine L. Lanford a Notary Public in and for Orange County, North Carolina, certify that Keith Hurand personally came before me this day and acknowledged that he is Vice President of NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company, and that by authority duly given and as a fact of said limited liability company, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 17<sup>th</sup> day of June, 2009.

[Signature]  
Notary Public

My Commission Expires:  
August 1, 2009

[NOTARY SEAL]

