

10.22

6

821 / 173

Book 0821 Page 0173
 FILED
 ROWAN COUNTY NC
 05/07/98 10:22 AM
 BOBBIE M. EARNHARDT
 Register Of Deeds
 By: BME Deputy/Asst.

Prepared By and Mail To: Kenneth L. Eagle, 1003-106 High House Road, Cary, NC 27513

STATE OF NORTH CAROLINA
 COUNTY OF ROWAN

FIRST AMENDMENT TO
 DECLARATION FOR THE CRESCENT

THIS FIRST AMENDMENT TO DECLARATION FOR THE CRESCENT, hereinafter referred to as the "First Amendment", is made this 7th day of May, 1998, by FLORA DEVELOPMENT LLC, a North Carolina limited liability company, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, the Declarant previously has recorded that certain "DECLARATION FOR THE CRESCENT", hereinafter referred to as the "Declaration", dated February 10, 1998, and recorded in the Rowan County, North Carolina Registry in Book 0814, Page 0379, the Declaration being incorporated by reference as if fully set out herein;

AND WHEREAS the Declarant is the Owner of all of The Properties that have been subjected to the Declaration, and, as of the date of execution of this First Amendment, there are no Members of the Association other than the Declarant;

AND WHEREAS, the Declarant desires to amend the Declaration to correct certain provisions and to add certain provisions, all as set forth herein;

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows:

1. Article III, Section 4.(e) is rewritten to read as follows:

"(e) Payment of special assessments or other charges shall not entitle Members of the Association to votes in addition to those specified herein."

2. Article V, Section 9 is rewritten to read as follows:

“Section 9. Special Assessments. In addition to the annual assessments authorized herein, and subject to the other requirements of this Declaration, at any time and from time to time the Association may levy a special assessment for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

(1) Construction, reconstruction, alteration, repair, replacement or removal of a capital improvement in or on the Common Property, including fixtures and personal property related thereto;

(2) Additions to the Common Property;

(3) The necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein;

(4) The Common Expenses of the Association, to the extent that such Common Expenses are not covered by annual assessments and applicable reserve funds; and

(5) Repayment of any loan made to the Association to enable it to pay the Common Expenses or to perform the functions and provide the services required or authorized herein.

Each special assessment first shall be approved by the affirmative vote by each class of membership of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association for which notice of the meeting includes notice of the proposed special assessment. A special assessment shall be due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board.

The proportion of each special assessment to be paid by the Owners of the various Property Classifications shall be the same as their respective proportions of the annual assessments applicable for the calendar year during which the special assessment is levied.”

3. The last paragraph of Article V, Section 17 is rewritten to read as follows:

“In addition to payment of the foregoing assessments, during the Declarant Control Period the Declarant shall fund all annual operating budget deficits, if any (such obligation being referred to herein as the “Declarant’s deficit funding obligation”), other than deficits caused by expenses excluded from the Declarant’s deficit funding obligation as provided in this paragraph. The Declarant’s deficit funding obligation may be satisfied with in-kind payments of services or materials. The following expenses of the Association specifically are excluded from the Declarant’s deficit funding obligation: (i) expenses arising out of or resulting from nonpayment or delinquent payment of any assessment or other charge by Owners other than Declarant, including expenses incurred in the collection of such assessments or other charges; (ii) unusual or extraordinary expenses of a type not normally included in the annual operating budget, including expenses caused by natural disasters or environmental hazards; (iii) expenses arising out of or resulting from any exculpation or immunity of directors, officers, Architectural Approval Committee members or others required or allowed by the Act, other applicable Legal Requirements or the Governing Documents; and (iv) expenses for indemnification of directors, officers, Architectural Approval Committee members and others required or allowed by the Act, other applicable Legal Requirements or the Governing Documents. The Declarant’s deficit funding obligation may be enforced against the Declarant and collected by the Association in the same manner as annual assessments applicable to other Owners.”

4. The first paragraph of Article VI, Section 6 is amended by deleting the last sentence thereof, which begins with the words “The Association shall” on line nine.

5. Article XVIII, Section 9 is rewritten to read as follows:

“**Section 9. Conflicts.** Whenever there exists a conflict among the Governing Documents of the Association (which include the Declaration, Supplemental Declarations, Subdivision Declarations, these Articles and the Bylaws), the provisions of the Declaration and thereafter, any applicable Supplemental Declaration or Subdivision Declaration shall control, except as to matters of compliance with the Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the

provisions of the Articles shall control. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent with the Act. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted by the Association. The Governing Documents shall be construed together and shall be deemed to incorporate one another in full.

6. A new Article XVIII, Section 13 is added as follows:

Section 13. Cemetery. At the time of the recordation of this Declaration in the Registry, there is a cemetery, or graveyard, located on the Declarant Property. It shall be the responsibility of the Association, whether or not the cemetery becomes Common Property, to maintain the cemetery in a neat, clean and well maintained manner at all times, including all of the following that are located on the cemetery: vehicular parking areas; grass; fencing; and landscaping. Such maintenance also shall be in accordance with applicable requirements of the City.”

7. A new Article XVIII, Section 14 is added as follows:

“Section 14. Plantation Pipe Line Company Easement. Portions of the Declarant Property are encumbered by easements in favor of Plantation Pipe Line Company (hereinafter referred to as “Plantation”), recorded in the Registry in Book 260, Page 360, Book 370, Page 271, Book 554, Page 525 and Book 554, Page 526. With respect to such easements (including any additions thereto or modifications thereof):

- a. Plantation shall have the right at any time in the future to lay additional lines of pipe within the easements, approximately parallel to the existing pipeline(s);
- b. No permanent structures, trees or fill dirt in excess of two (2) feet may be placed over Plantation’s pipeline confinement strip (as defined by the easements);
- c. The erection of fences of any type across Plantation’s easements shall have a gate or removable section of fence sixteen (16) feet wide within the easement area;

d. Fences, shrubbery or similar items shall not be placed longitudinally down or parallel to Plantation's pipelines within the easements;

e. Ornamental shrubbery or other similar vegetation or plant growth shall be restricted to a type having a shallow root base with no tap root and a mature height of no greater than four (4) feet. All trees are deemed detrimental to the pipelines and shall not be placed or allowed to remain within the easements unless specifically authorized by Plantation; and

f. Permanent structures of any type shall not be placed within the easements. Structures deemed "temporary" shall have a time limit imposed on their existence, commensurate with the type of structure, within the sole discretion of Plantation."

Except as amended by this First Amendment, the Declaration shall be and remain in full force and effect, and the Declaration, as amended by this First Amendment, is hereby incorporated by reference as if fully set out herein and re-adopted in its entirety (the Declarant recognizing that the word "SEAL" was omitted beside the Declarant's name in the recording of the Declaration).

(signature page follows)

IN WITNESS WHEREOF, the undersigned Declarant, having adopted the word "SEAL" appearing beside its name below as its seal for the execution of this Declaration, has caused this Declaration to be executed in its company name by its duly authorized Manager, who also has adopted the word "SEAL" appearing beside his signature below as his seal for the execution of this Declaration, on the day and year first above written.

FLORA DEVELOPMENT LLC (SEAL)

By: Timothy R. Smith (SEAL)
Timothy R. Smith
Manager

STATE OF NORTH CAROLINA, COUNTY OF ~~WAKE~~ Rowan

I, Bobbie M. Earnhardt, Register of Deeds, Notary ~~Public~~ of the County and State aforesaid, certify that Timothy R. Smith, Manager of Flora Development LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is a Manager said company and that he executed this Declaration on behalf of and as the act of the company by authority duly given. Witness my hand and official stamp or seal, this 7 day of May, 1998.



Bobbie M. Earnhardt
~~Notary Public~~ Rowan Co. Register of Deeds
My commission expires: _____

The foregoing certificate of _____, is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Bobbie M. Earnhardt, Register of Deeds for Rowan County, North Carolina

By: _____
Deputy/Assistant Register of Deeds