

BOOK 1615 PAGE 609

FOR AMENDED ~~DECLARATION~~ *Declaration*  
SEE BOOK 1657 PAGE 337  
THIS 10 DAY OF Dec 1997  
PHYLLIS N. WALL, REGISTER OF DEEDS  
BY: Mary B. Bae 1

1571~~4~~

Prepared by and Return to:

~~Hyatt & Stubblefield, P.C.  
1200 Peachtree Center South Tower  
225 Peachtree Street, N.E.  
Atlanta, Georgia 30303~~

River Dell Company  
4880 NC 42 East  
Clayton NC 27520

*SUPP. Declaration*  
FOR ~~AMENDED~~ *DECLARATION*  
SEE BOOK 1657 PAGE 337  
THIS 12 DAY OF DEC 1997  
PHYLLIS N. WALL, REGISTER OF DEEDS  
BY: [Signature] *dep*

**DECLARATION OF EASEMENTS AND  
COVENANT TO SHARE COSTS  
FOR FLOWERS' PLANTATION**

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**EXHIBITS**

Exhibit "A"	Land Initially Submitted
Exhibit "B"	Land Subject to Annexation

**DECLARATION OF EASEMENTS AND  
COVENANT TO SHARE COSTS FOR  
FLOWERS' PLANTATION**

THIS DECLARATION is made as of the date set forth on the signature page by Rebecca Flowers Finch ("Declarant").

**BACKGROUND STATEMENT**

Flowers' Plantation is a 3,500-plus acre mixed use, master planned community. The Master Plan for Flowers' Plantation anticipates the development of residential, commercial and recreational elements within the community with multiple community associations and property owner association entities ("Association Entities"). This Declaration sets forth easements, covenants and agreements between the Association Entities, other owners, and the Flowers' Plantation Foundation (the "Foundation," described herein) establishing a flexible and reasonable procedure for the administration, maintenance and preservation of certain Joint Property, as defined herein, and a method to defray the expenses associated therewith.

Declarant is the owner of all that property described on Exhibit "A" hereto, which is or may become subject to certain declarations of covenants, conditions, and restrictions by whatever name denominated applicable to the Association Entities and recorded or to be recorded in the Register of Deeds of Johnston County, North Carolina ("Association Declarations"). All property subject to this Declaration, together with all property which is from time to time subjected hereto pursuant to the terms of this Declaration, is referred to as "Flowers' Plantation."

Declarant desires to provide for maintenance of certain Joint Property described in Section 2.2 benefiting Flowers' Plantation, for the sharing of costs benefiting the owners of such property, and for an allocation of such costs among the Association Entities and other owners of non-residential property which may not be subject to an Association Entity ("Other Owners"). Declarant also desires to provide an easement for access by the Foundation over and through Flowers' Plantation to the extent necessary to perform its maintenance responsibilities for the Joint Property.

Declarant is or shall establish the Foundation as a non-profit entity which shall be vested with the rights and obligations established under this Declaration. Declarant anticipates, but shall not be obligated to provide, that the Foundation will be qualified as a tax exempt entity under the Internal Revenue Code. Until such time as the Foundation is established and operational, the Declarant shall exercise all rights and perform all functions of the Foundation, provided, that Declarant may delegate in writing some or all such rights and functions to other persons or entities.

NOW, THEREFORE, Declarant hereby declares that all of Flowers' Plantation now described on Exhibit "A" and such portions as may be submitted to this Declaration as provided herein shall be known as Flowers' Plantation, shall be held, sold, and conveyed subject to the

covenants, conditions, and easements contained herein, which are made for the express benefit of the Declarant, the Foundation, the Association Entities, Other Owners, and the present and future owners of property at Flowers' Plantation. The covenants, conditions, and easements contained herein shall run with the title to Flowers' Plantation and bind all parties having any right, title, or interest in any portion of the Flowers' Plantation, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of the Foundation, the Association Entities, Other Owners, and each owner of all or any portion of the Flowers' Plantation.

**Article I**  
**EASEMENTS**

There are hereby granted to the Foundation blanket easements over, under and across the Flowers' Plantation for access, ingress and egress, maintenance and repair to the extent reasonably necessary for the Foundation to perform its maintenance responsibilities with respect to the Joint Property.

**Article II**  
**MAINTENANCE**

2.1. Rights and Obligations. The Foundation shall have the right and the obligation to maintain the Joint Property, defined in Section 2.2, for which the Association Entities and Other Owners covenant and agree to contribute to the cost of such maintenance.

2.2. Joint Property. The Joint Property, as such term is used herein, includes, without limitation, the following elements of real and personal property located within Flowers' Plantation, regardless of fee title ownership:

(a) the <sup>100 RFF</sup> ~~75~~ foot buffer extending from each edge of the 100 foot State of North Carolina public right-of-way along State Road 1704 (presently known as Motorcycle Road and which shall be renamed "Neuse River Parkway" upon completion of paving) in Flowers' Plantation);

(b) all landscaping, vegetation, and aesthetic maintenance of the <sup>100 RFF</sup> ~~75~~ foot buffer areas and the public right-of-way along Neuse River Parkway in Flowers' Plantation;

(c) the brick entrance walls and white fences located at the entrance to Flowers' Plantation and running along Neuse River Parkway in Flowers' Plantation;

(d) all trails, walkways, paths, or recreational improvements, if any, located in the and the <sup>100 RFF</sup> ~~75~~ foot buffer areas running along Neuse River Parkway in Flowers' Plantation;

(e) property such as streams, wetlands, natural vegetation buffers, wildlife corridors or habitat areas within Flowers' Plantation which may be conveyed to the Foundation or designated as the maintenance responsibility of the Foundation on the recorded plats;

(f) community-wide property such as trails, walkways, passive use parks, open spaces, or similar areas within Flowers' Plantation which may be conveyed to the Foundation, or for which the Foundation may be granted easement and use rights, in deeds or instruments recorded with the Johnston County, North Carolina, Register of Deeds; and

(g) any other community-wide amenities or recreational facilities shared jointly by all Association Entities, their members and Other Owners, as such may be designated by Declarant.

2.3. Standard of Performance. Maintenance, as such term is used in this Declaration, shall mean maintaining, repairing, replacing, insuring, and taking any and all steps to keep the Joint Property neat, clean and attractive, including, without limitation, planting and replacing landscaping, as well as such other duties as may be necessary or appropriate to satisfy the Community-Wide Standard for Flowers' Plantation. The Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout Flowers' Plantation established by the Declarant, so long as the Declarant owns any property which is or may become subject to this Declaration, and thereafter, and as may be subsequently determined by the boards of directors of the Association Entities.

2.4. Limitation of Liability. Notwithstanding anything contained herein to the contrary, the Foundation shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

### Article III OBLIGATION TO SHARE COSTS

3.1. Responsibility and Obligation for Contributions. The Association Entities and Other Owners covenant and agree to pay an annual contribution to the Foundation to cover the costs incurred by the Foundation in maintaining, repairing, replacing, improving and insuring the Joint Property. The obligation to pay this contribution shall be mandatory and shall be a separate and independent covenant of each Association Entity and Other Owner. No diminution or abatement of the contribution or setoff shall be claimed or allowed by reason of any alleged failure of the Foundation to perform its maintenance responsibilities to the Community-Wide Standard. The sole remedy for failure of the Foundation to perform its responsibilities hereunder shall be to submit the matter to arbitration with the consent of all parties in accordance with North Carolina laws governing arbitration, or to pursue equitable remedies, it being agreed that monetary damages are not capable of being accurately determined.

3.2. Computation of Contributions. On an annual basis, at least 30 days before the beginning of each calendar year, the Foundation shall determine an estimated budget for maintaining, repairing, replacing, improving and insuring the Joint Property in a manner consistent with, and to the level of, the Community-Wide Standard during the upcoming year, which may include an amount to be placed in a reserve fund, in the Foundation's sole discretion.

The total budget of expenses for the Joint Property shall be allocated between the Association Entities and Other Owners on the basis of a formula. The formula shall apply to all residential Units (a term to include lots, dwellings or other term by whatever name used in the Association Declarations) zoned for development and all non-residential parcels or tracts with a certificate of occupancy and are located within Flowers' Plantation which are subject to this Declaration.

(a) Residential Units. Each residential Unit shall be assigned one pro-rata share of the total budget of Joint Property expenses.

(b) Non-residential Units. Non-residential parcels or tracts within the Flowers' Plantation shall be assigned "Equivalent Units" to allocate contribution liabilities for Joint Property expenses. Each non-residential parcel or tract shall be assigned one Equivalent Unit for each 1,000 square feet of gross floor area within any structure (rounded to the nearest 1,000 square feet). Each non-residential parcel shall be allocated at least one Equivalent Unit. The Other Owner of the non-residential parcel, or the non-residential property owners' association governing such parcel, if any, shall be assigned one pro-rata share of the total budget for each Equivalent Unit within such parcel or Association Entity.

In determining the pro-rata share, the numerator of the formula shall be the sum of all the Units' or Equivalent Units' pro-rata shares within each Association Entity or non-residential parcel of an Other Owner. The denominator of the formula shall be the total number of residential Units and non-residential Equivalent Units subject to this Declaration on the budget date. The quotient, multiplied by the total budget, shall determine the amount of each Association Entity's or Other Owner's contribution to the Foundation.

Each Association Entity shall make such contributions for each residential Unit or and non-residential parcel subject to its jurisdiction. Other Owners shall pay directly to the Foundation. The Foundation shall send each Association Entity and Other Owner a copy of its budget and an annual notice of its contribution obligation based on the foregoing formula. The notice of annual contribution shall be adjusted to reflect any excess or deficiency in the budget prepared for the immediately preceding year as compared to actual expenses for that period and any unreimbursed costs incurred by the Foundation during the previous fiscal year to collect amounts due hereunder.

3.3. Payment of Contributions. Within 30 days of receipt of written notice of an annual contribution, the Association Entities and Other Owners shall pay to the Foundation the entire amount due; provided, however, the Foundation may provide that such contribution may be paid in installments. The Declarant may elect on an annual basis to pay contributions to the Foundation for any property owned by Declarant and subject to this Declaration on a per Unit basis or to fund the difference between the Foundation's actual expenditures and the amounts collected from the Association Entities and all Other Owners. Any contribution delinquent for a period of more than 30 days shall incur a late charge in such amount as the Foundation may from time to time reasonably determine (subject to the limitations of North Carolina law), interest (not to exceed the highest rate allowed by North Carolina law) on the principal amount due, all costs of collection (including attorney's fees), and any other amounts provided or permitted by law. In

the event that any contribution remains unpaid after 90 days, the Foundation may institute suit to collect a money judgment for such amounts. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent contributions.

3.4. Recordkeeping. The Foundation shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder. The books and records and related financial statements shall be made available for inspection and copying upon request by any of the boards of directors of an Association Entity or Other Owner during normal business hours. Copying charges shall be paid by the Association Entity or Other Owner when requesting copies. If an Association Entity or Other Owner desires to have the records audited, it may do so at its expense, and the Foundation shall cooperate by making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question.

If the amount of actual expenses for the year is disputed after the audit, the Foundation and the Association Entity or Other Entity requesting the audit shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Foundation by five percent or more, the Foundation shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Foundation by two percent or less, the Association Entity or Other Entity shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by the Foundation and the requesting Association Entity or Other Owner. Variances shall be taken into account in the following year's budget as provided in Section 3.2.

#### Article IV

#### FOUNDATION ADMINISTRATION AND JURISDICTION

4.1. Administration. The Declarant hereby reserves the right to administer the Foundation, subject to its organizational documents, so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration as provided herein. Thereafter, the Foundation shall be administered through representatives of the Association Entities and Other Owners as specified in the Foundation's organizational documents.

4.2. Jurisdiction. Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by filing a Supplemental Declaration with the Register of Deeds in Johnston County, North Carolina, describing the additional property to be subjected. A Supplemental Declaration filed pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

The Declarant's right to expand the community pursuant to this Section shall expire when all property described on Exhibit "B" has been subjected to this Declaration or 40 years after the recording of this Declaration in the Public Records, whichever is earlier. Until then, the Declarant may transfer or assign this right and the Declarant's rights set forth herein to any

person who is the owner or developer of a portion of the real property described in Exhibits "A" or "B." Any such transfer and/or assignment shall be memorialized in a written, recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

**Article V**  
**GENERAL**

5.1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Foundation or of the Association Entities, or of the Other Owner, as applicable. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

5.2. Enforcement. The obligations created hereunder shall inure to the benefit of, and may be enforced by, the Declarant, the Foundation, the Association Entities, and any Other Owner by arbitration with the agreement of all parties, or by any means at law or in equity as may be more specifically set forth herein.

5.3. Amendment. So long as Declarant owns any property described on Exhibit "A" or "B," Declarant may unilaterally amend this Declaration for any purpose. Thereafter, when Declarant no longer owns any property described on Exhibit "A" or "B," this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of a majority of the members of the board of directors of the Foundation, and the affirmative vote or written consent, or any combination thereof, of the Association Entities and Other Owners representing a majority of the total Units and Equivalent Units subject to this Declaration.

Amendments to this Declaration shall become effective upon recordation in the Register of Deeds of Johnston County, North Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an individual or entity consents to any amendment to this Declaration, it will be conclusively presumed that such individual or entity has the authority so to consent, and no contrary provision in any mortgage or contract between such individual or entity and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.



5.4. Duration. Unless prohibited or limited by law, this Declaration shall have perpetual duration. If North Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall run for the maximum length permitted and automatically be extended at the expiration of such period for successive periods of 10 years each.

5.5. Interpretation. This Declaration shall be governed by and construed under the laws of the State of North Carolina.

5.6. Waiver. No failure of the Foundation or the Association Entities to exercise any power under this Declaration or insist upon strict compliance with this Declaration and no custom or practice at variance with the terms of this Declaration shall constitute a waiver of the right to demand exact compliance with the terms of this Declaration.

5.7. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

5.8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

5.9. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

5.10. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 11<sup>th</sup> day of July, 1997.

DECLARANT: Rebecca Flowers Finch, individually

By: Rebecca Flowers Finch [SEAL]  
Rebecca Flowers Finch

4977/CADocs/CSC-Flowers' Plantation-052097/AWO

[Acknowledgment On Next Page]

BOOK 1615 PAGE 618

STATE OF NORTH CAROLINA )  
COUNTY OF Jackson )

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that Rebecca Flowers Finch, personally appeared before me this day and acknowledged that she, in her individual capacity, executed the foregoing instrument.



Witness my hand and official stamp or seal this the 11<sup>th</sup> day of July, 1997.

Patricia S. Benson  
Notary Public  
My Commission Expires:

State of North Carolina, Jackson County  
The foregoing instrument was presented to me by  
Patricia S. Benson  
Notary(Notaries) Public is(are) certified to be correct.  
This instrument was presented for registration and recorded  
in Book 1615 Page 609  
This July 11 1997 at 12:35 PM  
Phyllis Vall Shonda H. Perry  
Register of Deeds Deputy Register of Deeds

## EXHIBIT "A"

Land Initially Submitted

EXHIBIT A

TO DEED

FROM REBECCA FLOWERS FINCH [freetrader]

TO GRAND STEP, L.L.C.

DATED: JULY 11, 1997

BEGINNING at an iron pipe set in the right-of-way line of North Carolina Highway 42 at the eastern end of the sight distance line in the northeastern quadrant of the intersection of North Carolina Highway No. 42 and East School Road, and from said beginning point the line runs thence with the sight distance line North 49 degrees 14 minutes 35 seconds West 63.27 feet to an iron pipe set in the right-of-way line of East School Road; thence with the right-of-way line of the road North 03 degrees 56 minutes 46 seconds West 162.01 feet to an iron pipe; thence continuing with the right-of-way of the road along a curve having a delta angle of 15 degrees 26 minutes 53 seconds, a radius of 806.65 feet, an arc length of 217.49 feet and a chord bearing and distance of North 11 degrees 40 minutes 13 seconds West 216.83 feet to an iron pipe set in the right-of-way of said road, the western end of the sight distance line in the southeastern intersection of East School Road and N.C.S.R. 1704; thence with said sight distance line North 28 degrees 37 minutes 19 seconds East 78.83 feet to an iron pipe set in the right-of-way line of N.C.S.R. 1704; thence with the right-of-way of N.C.S.R. 1704 North 79 degrees 13 minutes 46 seconds East 450.87 feet to an iron pipe, a new corner with Rebecca Flowers Finch; thence a new line with Finch South 04 degrees 35 minutes 16 seconds East 537.25 feet to an iron pipe set in the right-of-way line of North Carolina Highway No. 42; thence with the right-of-way line of said highway South 85 degrees 29 minutes 13 seconds West 422.66 feet to the point and place of beginning, containing 5.495 acres, more or less, according to a plat and survey by Dennis R. Blackmon, R.L.S., dated March 24, 1997, and styled "Minor Subdivision Plat for Rebecca Flowers Finch, Surveyed for Lois Stephenson, et als."

For chain of title information, see Book 946, page 727, Johnston County Registry.

