

PREPARED BY: JAMES E. GILL, JR.

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RECORDED - 495580  
KATHERINE LEE PAYNE  
REGISTER OF DEEDS  
GUILFORD COUNTY, NC  
BOOK: 5313  
PAGE(S): 0317 TO 0327  
09/13/2001 13:28:12

RECORDED - 449104  
KATHERINE LEE PAYNE  
REGISTER OF DEEDS  
GUILFORD COUNTY, NC  
BOOK: 5205  
PAGE(S): 0038 TO 0048  
04/23/2001 16:35:07

DECLARATION  
OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

AUSTIN DOWNS, PHASE IV

04/23/2001 GUILFORD CO. NC \$6.00  
1 MISC DOCUMENTS 449104 \$18.00  
9 MISC DOC ADMIN PGS \$2.00  
1 PROBATE FEE \$2.00

THIS DECLARATION, made on the date hereinafter set forth by Double D Developers, L.L.C. a North Carolina limited liability company hereinafter referred to as "Declarant;"

W I T N E S E T H:

THAT WHEREAS, Declarant is the owner of certain property in High Point Township, Guilford County, State of North Carolina, which is more particularly described as follows:

All of that certain parcel of land shown on the plat entitled, Austin Downs, Phase IV, which appears of record in the Office of the Register of Deeds of Guilford County, North Carolina, in Plat Book 41, at Page 68.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

PROBATE FEE REQUIRED PER  
GENERAL STATUTE 47-36.1

ARTICLE I  
DEFINITIONS

09/13/2001 GUILFORD CO. NC \$6.00  
1 MISC DOCUMENTS 495580 \$18.00  
10 MISC DOC ADMIN PGS \$2.00

Section 1. "Association" shall mean and refer to AUSTIN DOWNS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner (other than Declarant), whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely a security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned  
THIS DOCUMENT IS BEING RE-RECORDED TO CHANGE "ARTICLE VIII, RESTRICTIONS" TO READ:  
"ARTICLE IX, RESTRICTIONS".

*James E. Gill, Jr.*  
James E. Gill, Jr.

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by the Association for the common use and enjoyment of the Owners including non-dedicated streets. The "Common Area" is shown as non-dedicated streets or is referred to as "Common Area" on the recorded plat. The numbered lots are not a part of the Common Area.

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Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean Double D Developers, L.L.C., its successors and/or assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II  
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner and Declarant shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulation;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by at least sixty-six and two-thirds percent (66 2/3%) of each class of members, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Declaration of Use. Declarant and Owner may delegate, in accordance with the By-Laws, their rights of enjoyment of the Common Area and facilities to the members of their families, their tenants, or contract purchasers who reside on the property.

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ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Declarant and every Owner of a Lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership or any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be Double D Developers, L.L.C. and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.
- (b) upon resignation of Declarant of Class B member or December 31, 2010, whichever comes first.

ARTICLE IV  
COVENANT FOR MAINTENANCE AND ASSESSMENT

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest at the rate of 18% or the highest rate allowed by law whichever is less, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. In the event that the Association shall fail to pay any taxes or assessments when due, each lot owner shall owe a pro-rata share of

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said tax or assessment which shall be established in accordance with Section 9-6-10(b)4 of the High Point City Ordinances as amended from time to time. Said pro-rata share shall become a lien on each property owner's lot in favor of the City of High Point.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, service and facilities devoted to this purpose, and to promote the use and enjoyment of the Common Area, including but not limited to, the payment of taxes and assessments assessed against the Common Area, the procurement and maintenance of insurance, including liability insurance, in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, garbage and trash collection services, street lighting, maintenance and landscaping of Common Areas and such other needs as may arise. The Association shall have no responsibility for the maintenance of any lot or improvement thereon.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE HUNDRED TWENTY AND NO/100 (\$120.00) DOLLARS per Lot.

From January 1 of the calendar year immediately following the first conveyance of a Lot to an Owner:

(a) The maximum annual assessment shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed six percent (6%) of the maximum annual assessment of the previous year; and

(b) The maximum annual assessment may be increased without limit by a vote of at least sixty-six and two-thirds percent (66 2/3%) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

At any time the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including retention pond, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-six and two-thirds percent (66 2/3%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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Section 5. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots within the same class and may be collected on a monthly basis; provided, however, each Lot owned by the Declarant shall be assessed for both annual and/or special assessments at twenty five percent (25%) of the assessment for Lots owned by Class A members, but such twenty five percent (25%) assessment ratio for a particular Lot owned by the Declarant shall terminate immediately upon the transfer of said Lot from the Declarant to a Class A member; and thereafter, the full one hundred percent (100%) assessment for such Lot shall apply.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein may be collected on a monthly basis and shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each Lot and send written notice of each assessment of every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, cost and reasonable attorney's fees of such action of foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien provided for herein shall be subordinate to the lien of any

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mortgage, mortgages, deed of trust or deeds of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V

##### DEFAULT BY ASSOCIATION

Section 1. Default by Owners' Association: Upon default by the Owners' Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the common areas, which default shall continue for a period of six (6) months, each owner of a lot in the development shall become personally obligated to pay to the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of lots in the development. If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the owner.

#### ARTICLE VI

##### ROUTINE GROUNDS MAINTENANCE

Section 1. Maintenance of Landscaping. The Association is responsible for maintaining the general landscaping of the Common Areas, and for the maintenance of the non-dedicated streets and any retention ponds and utilities located therein. Each Owner is responsible for maintaining the general landscaping of their Lot, in harmony with the general landscape design.

#### ARTICLE VII

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EASEMENTS

Section 1. Utilities and Drainage. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 2. Easement of Owner Over Common Area. The Owner of Each Lot on which a dwelling is situated shall have the right at any time to enter upon the Common Area adjoining said Owner's Lot. The Owner of each Lot upon which a dwelling is situated shall also have the right of ingress, egress and regress over and across the non-dedicated streets as shown on the recorded plat.

ARTICLE VIII  
GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Failure by the Declarant, the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date the Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy five percent (75%) of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

Section 4. Annexation. Additional residential property and Common Area may annexed to the Properties with the consent of sixty six and two-thirds percent (66 2/3%) of each class of members, or

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as hereinafter provided.

Provided, however, if within five (5) years of the date of incorporation of the Association, the Declarant shall develop additional lands within the area described as Tract A on the Plat of C. Michael Austin recorded in Plat Book 116 at Page 60 of the Guilford County Registry, such additional lands may be annexed to said Properties without the assent of the Class A members; provided, however, the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section, or as said general plan may subsequently have been amended with the consent of the Federal Housing Administration and the Veterans Administration. The Declarant shall have the authority to determine the number of acres to be annexed, whether or not such land should be annexed, the size and number of Lots, types and sizes of dwellings erected thereon and all other matters incident to the development of such additional land; provided, however, detailed plans for the development of additional lands must be submitted to the Federal Housing Administration or the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that the detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of sixty-six and two-thirds percent (66 2/3%) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days not more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

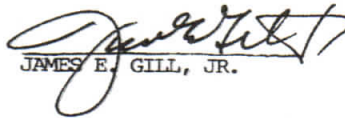
At this meeting, the percentage of members or of proxies entitled to cast sixty percent (60%) of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

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IX  
~~ARTICLE VIII~~  
 RESTRICTIONS

  
 JAMES E. GILL, JR.

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1. LAND USE AND BUILDING TYPE: No lot shall be used for other than residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than: (1) one detached, single-family dwelling not to exceed two and one half stories in height (hereinafter the "dwelling"); (2) one private garage, whether attached to or detached from the dwelling, for not more than two automobiles; (3) and one accessory building for storage incidental to residential uses which is not in excess of 250 square feet in area and is located to the rear of the dwelling.
  2. DWELLING SIZE: No dwelling shall be permitted having an improved heated area on the main structure, exclusive of open porches and garages, or not less than 1,700 sq. ft. for a one (1) story dwelling, 1500 sq. ft. for a one (1) story dwelling with a basement; 1800 sq. ft with 1,000 sq. ft. on first floor for a one and one-half (1-1/2) story dwelling; 2100 sq. feet for a two (2) story and, 1900 sq. ft. for a two story dwelling with a basement; the main roof of each dwelling shall have at least an 9/12 pitch.
  3. DRIVE WAYS: Paved drive ways (concrete) are required for each dwelling.
  4. BUILDING SETBACK: No building shall be located on any lot nearer to the front line or nearer to the side street line than the building setback lines shown on the recorded plat.
  5. KEEPING OF ANIMALS: No livestock of any nature shall be kept upon any lot, nor shall dogs, cats, or other animals be kept for breeding purposes or for any purpose other than household pets.
  6. WAIVER OF VIOLATIONS: Violation of these restrictions may be waived by the adjoining property owners.
  7. NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which maybe or may become any annoyance or nuisance to the neighborhood.
  8. SATELLITE DISHES: No satellite dishes larger than two feet in diameter shall be erected on any lot.
  9. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than five (5) square feet advertising the property for sale or for rent, or signs used by a builder to advertise the property during the construction and sales period.
  10. FENCES: All fences erected on a lot shall be approved by
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the Architectural Control Committee of the Homeowners Association.

IN WITNESS WHEREOF, Double D Developers, L.L.C. has caused this instrument to be executed by its partners, as of the 30th day of March, 2001.

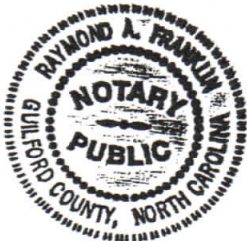
Donald R. Scott (SEAL)

**NORTH CAROLINA, GUILFORD COUNTY**

I, Raymond A. Franklin, a Notary Public of County and State aforesaid, certify that Donald R. Scott Managing Member of Double D Developers, L.L.C. personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 30th day of March, 2001.

My Commission Expires: 10-04-04 Raymond A. Franklin  
Notary Public

(SEAL)



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NORTH CAROLINA  
GUILFORD COUNTY

RECORDED - 495581  
KATHERINE LEE PAYNE  
REGISTER OF DEEDS  
GUILFORD COUNTY, NC  
BOOK: 5313  
PAGE(S): 0328 TO 0329  
09/13/2001 13:28:35

**AMENDED RESTRICTIONS  
AUSTIN DOWNS SUBDIVISION PHASES III and IV**

**WHEREAS:** DOUBLE D DEVELOPERS, LLC, the DECLARANT, has previously executed restrictions for Austin Downs Subdivision PHASE III, as recorded in Deed Book 4791 at Page 1076 of the Guilford County Registry; and Austin Downs Subdivision Phase IV as recorded in Deed Book 5205 Book 038 of the Guilford County Registry and rerecorded in Deed Book 5313 at Page 377, and

**WHEREAS:** Article VIII, SECTION 3 of said restrictions provides that Declarant may amend said restrictions if Declarant owns 90 percent or more of the subdivided lots; and

**WHEREAS:** the Declarant currently owns more than 90 percent of the subdivided lots and therefore wishes to amend the aforesaid restrictions as follows:

**ARTICLE IX, (1.) of Phases III and IV  
RESTRICTIONS**

**SHALL BE AMENDED TO READ:**

**1. LAND USE AND BUILDING TYPE:**

No Lot shall be used for other than residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than: (1) one detached, single-family dwelling not to exceed two and one half stories in height (hereinafter called the "dwelling"); (2) and one accessory building for storage incidental to residential uses which is not in excess of 250 square feet in area and is located to the rear of the dwelling; (3) and all building and garage plans will be approved by the DECLARANT.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this the 12<sup>th</sup> day of September, 2001.

DOUBLE D-DEVELOPERS, LLC

BY: Donald R. Scott (seal)  
DONALD R. SCOTT, MANAGER

09/13/2001 GUILFORD CO. NC  
1 HISC DOCUMENTS 495581 \$6.00  
1 PROBATE FEE \$2.00

State of North Carolina, County of Guilford

I, RAYMOND A. FRANKLIN, a Notary Public for Guilford County and said State do hereby certify that Donald R. Scott Managing Member of Double D Developers, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal this 12<sup>TH</sup> day of SEPTEMBER, 2001.

Raymond A. Franklin

My Commission Expires: 10/04/04

