



2005000627

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2005 JAN 06 02:25:09 PM
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INSTRUMENT # 2005000627

Drawn by & HOLD FOR:
MOORE & ALPHIN, PLLC (gmt)

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

**RESTRICTIVE COVENANTS
FOR
ASHFIELD PLACE SUBDIVISION
PHASE 2 & 4A**

ROBERT C. RHEIN INTERESTS, INC., a North Carolina corporation (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. **LAND USE AND BUILDING TYPE.** All Lots shall be used for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not less than two (2) nor more than three (3) cars, and other out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street.

2. **DWELLING SIZE.** The minimum heated square footage of a dwelling may not be less than 1,500 square feet for a one-story dwelling and 850 square feet on the first floor of a two-story or two and one-half story dwelling.

3. **BUILDING SETBACKS; HOUSE LOCATION.** No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Subdivision or as otherwise required or permitted by the zoning ordinance of the City of Durham (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

4. **FENCES.** No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Chain-link or other metal fencing is not permitted. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Ashfield Place Homeowners Association, Inc. (the "Declaration"), recorded in office of the Register of Deeds of Durham County, North Carolina. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by

the slope or grade of any Lot or Lots nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

5. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

6. PARKING; DRIVEWAYS AND PARKING PADS; ABANDONED VEHICLES. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat or boat trailer shall be parked on any street within the Subdivision. A boat and/or boat trailer may be parked or kept on a Lot if it is parked or kept in an enclosed garage complying with the Zoning Ordinance and approved pursuant to Article VIII of the Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

7. ANIMALS. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

8. NUISANCES; BUSINESS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the Board of Adjustments of the City of Durham. No basketball goal shall be permitted on any Lot except in accordance with rules and regulations adopted by the Association or unless such goal is specifically approved pursuant to Article VIII of the Declaration.

9. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

10. ANTENNAS; SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than two feet (2') in diameter; (ii) the receiver or disc is located on the side of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the Subdivision. Any such screening must be approved as provided in Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

11. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools shall be permitted.

12. MAILBOXES. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article VIII of the Declaration.

13. MAINTENANCE OF LOT; CONSTRUCTION. Each owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the owner of such Lot shall repair the damage and reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

14. CLOTHESLINES. No exterior clothesline may be erected or maintained on any Lot.

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling, which mains furnish domestic water from sources beyond the boundaries of the Lot.

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by the City of Durham.

18. EXTERIOR MAINTENANCE. The owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

19. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer and storm water drainage facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of such Lot, except for any such improvements for which a public authority or utility company is responsible.

Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Durham County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

Easements are also reserved for the benefit of the Declarant, the Ashfield Place Homeowners Association, Inc. (the Association"), and the City of Durham (the "City"), and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the map referred to in Exhibit A as "20' Storm Drainage Esmt" and / or "Storm Drainage Easement", for the purpose of installing, operating and maintaining storm water drainage facilities thereon. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant, the Association or the City, unless approved as provided in Article VIII of the Declaration and, if required, by the City.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

20. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

21. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article VIII of the Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that no waiver may be granted for a violation in excess of twenty-five percent 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Durham County Registry.

22. STREET LIGHTING. Declarant reserves the right to subject the Subdivision to a contract with Duke Power Company ("Duke) for installation of street lighting, which contract requires a continuing monthly payment to Duke by each residential customer.

23. ENFORCEMENT. Enforcement of these Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may also be enforced by the Association, pursuant to the Declaration and the Bylaws of the Association.

24. SEVERABILITY. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

25. TERM. These covenants shall run and bind the land and all owners thereof for a period of twenty-five (25) years from the date they are recorded, after which time, they shall be automatically extended for successive

periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the first five year period by the Declarant, without the approval or joinder of any other person. These covenants may also be amended during the first twenty-five (25) year period by an instrument signed by the then-owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-owners of not less than seventy-five percent (75%) of the Lots.

26. ASHFIELD PLACE HOMEOWNERS ASSOCIATION, INC. The owners of Lots within the Subdivision are Members of the Association and are subject to and bound by the Declaration, which provides additional restrictions on such Lots.

27. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the City of Durham. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date set forth in the notary acknowledgment below.

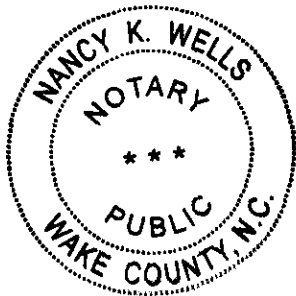
DECLARANT: **ROBERT C. RHEIN INTERESTS, INC.**

By: Richard M. Westmoreland, Jr.
Richard M. Westmoreland, Jr., Vice President

STATE OF NORTH CAROLINA - WAKE COUNTY

I, the undersigned, a Notary Public of said County and State, certify that **Richard M. Westmoreland, Jr.**, personally appeared before me this day and acknowledged that he is a Vice President of **Robert C. Rhein Interests, Inc.**, a North Carolina corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp and seal, this the 6th day of January, 2005.



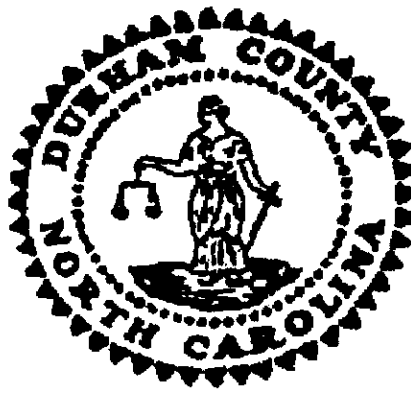
Nancy K. Wells
Notary Public
My commission expires: 11/10/08

EXHIBIT A

**ASHFIELD PLACE SUBDIVISION
Phases 2 & 4A**

Lying and being in the City of Durham, Lebanon Township, Durham County, North Carolina, and being more particularly described as follows:

All of the real property shown and identified on the map entitled "**ASHFIELD PLACE PHASES 2 & 4A, Subdivision, Easement, and R/W Dedication**", recorded in **Plat Book 165, Pages 10-18**, Durham County Registry, which includes **Lots 79-95, inclusive, Lots 154-170, inclusive, and Lots 121-130, inclusive**; the right of ways for Paces Ferry Drive, White Run Court and Black Boulder Tr. and the parcel identified as "Open Space" containing 77,758 square feet or 1.78 acres, more or less, as shown on the aforesaid recorded map, to which map reference is hereby made for a more particular description.



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 01/06/2005 02:25:09 PM

Book: RE 4663 Page: 659-665

Document No.: 2005000627

R-C 7 PGS \$29.00

Recorder: SHARON M CEARNEL

State of North Carolina, County of Durham

The foregoing certificate of NANCY K. WELLS Notary is certified to be correct. This 6TH of January 2005

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Sharon M Cearnel
Deputy/Assistant Register of Deeds



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