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PREPARED BY AND HOLD FOR:
CHARLES H. [illegible], ATTORNEY

NORTH CAROLINA

WAKE COUNTY

TERMINATION OF RESTRICTIONS AND COVENANTS OF ARBORETUM SUBDIVISION, RECORDED IN BOOK 4489, PAGE 926 AND BOOK 4498, PAGE 489, WAKE COUNTY REGISTRY and DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ARLINGTON HILLS

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PRESENTED FOR REGISTRATION

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THIS DECLARATION, made on the date hereinafter set forth by CENTURA BANK, a banking corporation formed under the laws of the United States of America, hereinafter referred to as the "Declarant;"

WITNESSETH:

WHEREAS, by foreclosure deed recorded in Book 4635, Page 560, and Articles of Merger recorded in Book 4806, Page 88, Wake County Registry, Declarant acquired title to all the real property to which the Declaration of Restrictions and Covenants of Arboretum Subdivision, recorded in Book 4489, Page 926, and Book 4498, Page 489, Wake County Registry, are applicable, which Restrictions and Covenants were subordinate to the Deed of Trust recorded in Book 4369, Page 76, Wake County Registry, through which Declarant acquired said title; and Declarant desires to withdraw, terminate and declare null and void for all purposes said Declarations of Restrictions and Covenants; and

WHEREAS, the Declarant is the owner of certain property near the City of Raleigh, Wake County, North Carolina, which is more particularly described on Exhibits A, B and C, attached hereto; and the property described on Exhibit A attached hereto shall be known as Arlington Hills Phase 1; and

WHEREAS, Declarant will convey the said property described on Exhibit A attached hereto subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby withdraws and terminates for all purposes both of the Declarations of Restrictions and Covenants of Arboretum Subdivision recorded in Book 4489, Page 926 and Book 4498, Page 489, Wake County Registry; and

Declarant hereby declares that all of the properties described on Exhibit A attached hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described on Exhibit A attached hereto, which is all the Lots shown on Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry. Arlington Hills Phase 1 is the first of a series of phases which the Declarant intends to develop and to subject to the provisions of this Declaration. The property described on Exhibit B attached hereto is additional land owned by Declarant which may in the future be developed as an addition to Arlington Hills and subjected to the provisions of this Declaration and to the jurisdiction of the Association. The Property described on Exhibit C attached hereto will be conveyed to the Association as "Common Area." Notwithstanding the foregoing, Declarant agrees that the property described on Exhibits A & B shall contain no more than sixty-seven (67) lots.

Section 2. The Declarant hereby reserves the right to subject other real property to this Declaration in order to extend the scheme of this Declaration to other property to be developed and thereby to bring such additional properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon or to be placed thereon, which in the future may be subjected to this Declaration shall be designated consecutively as "Arlington Hills Phase 2; and such similar designation for each phase. All annexations of additional properties to the original development described in Exhibit A must be contiguous to Arlington Hills Phase 1 or property previously annexed, must be five (5) acres or more within the tract described on Exhibit B attached hereto and/or within such other land as may be acquired by Declarant, and must be approved by the City of Raleigh. In addition, each phase shall only contain detached single family dwelling lots.

ARTICLE II

DEFINITIONS

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

Section 2. "Properties" shall mean and refer to that certain real property described on Exhibit "A" attached hereto, and such additions thereto of five (5) acres or more as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property and amenities located thereon owned by the Association for the common use and enjoyment of members of the Association. Common Area shall also include water lines and sewer lines located within the Common Area and not within City of Raleigh sanitary sewer easements. Water lines and sewer lines located on a Lot are not portions of the Common Area.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and with the exception of any tract of land designated as property reserved for future development on the map of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry, or on any subsequently recorded map of any part of the Properties. Land shown on any subdivision map of any part of the Properties as land reserved for future development is not a Lot, but such reserved land may become one or more Lots on a later recorded subdivision plat where such land is designated by lot number and is not shown as reserved for future development.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, 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 as security for performance of an obligation.

Section 7. "Declarant" shall mean and refer to Centura Bank, its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 8. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 9. "Building" shall mean and refer to a residential structure, constructed or erected on the Properties.

Section 10. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 11. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;
(b) Expenses for maintenance of the Common Area as provided in this Declaration;
(c) Expenses of administration, maintenance, repair or replacement of the Common Area;
(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws of the Association.
(e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
(f) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;
(g) Expenses agreed by the members to be common expenses of the Association; and
(h) Payments or obligations to Reserve accounts established and maintained pursuant to the Declaration.

Section 12. "Amenities" shall mean the facilities constructed, erected or installed on the Common Areas for the use, benefit and enjoyment of Members.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Annexation of additional Property, except as provided in Section 2 of this Article III, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any.

Section 2. Annexation by Declarant. Within a period of five (5) years from the date of conveyance of the first Lot by Declarant, Declarant may annex additional lands, described in Section 2 of Article I of this Declaration, without the assent of Class A members, and without action or consent on the part of the Association or any other person or entity, except the City of Raleigh if required by its ordinances.

Section 3. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Association if pursuant to Section 1 above and by the Declarant if pursuant to Section 2 above, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the City of Raleigh if required by its ordinances.

Section 4. Additional Requirements for Annexation by City of Raleigh. In addition to the above requirements required by this Article, additional lands which have not been approved by the City of Raleigh for inclusion in the Arlington Hills development may be annexed only if they are contiguous to the Arlington Hills development, contain five (5) acres or more, are not in conflict with the legal documents for the Arlington Hills development, and receive approval from the City of Raleigh as to the number of lots to be developed within said lands.

Section 5. All portions of annexed additional lands that are designated as Common Area on the subdivision plat of such annexed additional lands shall be conveyed to the Association in accordance with Section 3 of Article VI of this Declaration.

ARTICLE IV

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE V

VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such 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 and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which Declarant holds the interest required for membership, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, provided, however, the Class B membership shall be reinstated if thereafter, and before the time stated in (b) below, additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article I, Section 2 and Article III, Section 2 above; or

(b) five (5) years from the date of conveyance of the first Lot by Declarant.

Section 2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

ARTICLE VI

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the assent of members entitled to cast two-thirds (2/3) of the votes of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property unless prohibited by law, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and

(b) 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 Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 15 days nor more than 30 days in advance.

(c) The right of the Association to exchange with Declarant or any other owner of a Lot in Arlington Hills a portion of the Common Area for a portion of the real property owned by Declarant or such Owner. Property acquired by the Association in the exchange shall become a part of the Common Area and shall be released from all provisions of this Declaration except those applicable to the Common Area. The portion of the Common Area acquired by Declarant or the Owner of a Lot in the exchange shall cease to be Common Area and shall be subject to the provisions of this Declaration that were applicable to the property conveyed to the Homeowners Association in such exchange. Such exchange must be in accordance with the provisions of the City of Raleigh Code, and may be made only when--

(1) written notice of the exchange is given to each member of the Association except in case where the exchange is done to eliminate an encroachment; and

(2) after the notice is given, if required, the Association approves the exchange; and

(3) the exchanged properties and other considerations are of like value and utility; and

(4) the acreage and configuration of the remaining open space (including property to be received by the Association in such exchange) equal or exceed the requirements of the City of Raleigh Code; and

(5) the exchange is approved by the City of Raleigh planning director.

(d) The provisions of the Declaration of Restrictive Covenants recorded in Book 5004, Page 12, Wake County Registry.

(e) The provisions of that certain General Warranty Deed of Easement for greenway purposes recorded in Book 5004, Page 6, Wake County Registry.

(f) The right of the Association to suspend a member's right to use the Common Area during any period in which such member shall be in default in the payment of any assessment levied by the Association or for such period determined by the Association for infraction of published rules and regulations of the Association.

(g) The provisions of published rules and regulations of the Association concerning use of Common Area.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Common Area. The Common Area, shown on each subdivision map of the Properties to be recorded in the Wake County Registry, will be conveyed in fee simple to the Association, free and clear of all encumbrances and liens except utility and drainage easements and easements to governmental authorities, prior to the conveyance of any Lots shown on said map.

Section 4. Book and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member or his designated agent. The Declaration, the Articles of Incorporation and the

Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE VII

COVENANT FOR ASSESSMENTS

Section 1. Creation of the lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and every other owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant, and agree to pay to the Association:

(a) Annual assessments or charges which are common expenses; and

(b) Special assessments for capital improvements.

Notwithstanding any provision herein to the contrary, the assessment for each Lot owned by Declarant shall be twenty-five percent (25%) of the assessment which would have otherwise been due. Provided, however, that if the Declarant shall obtain a certificate of occupancy for a dwelling located on a Lot, full assessments on said Lot shall be due from the time the certificate of occupancy is obtained.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees for collection thereof, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents on the Properties; enforcing these covenants and the rules of the Association; improving and maintaining the Common Area; and paying all common expenses.

Section 3. Amount of Assessment.

(a) Initial Assessment. To and including December 31, 1992 the initial annual assessment shall not be in excess of One Hundred Twenty Dollars ($120.00) per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1992, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed eight (8%) percent per year from the date of the last increase.

(c) Increase by Members. From and after December 31, 1992, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of annual assessments for common expenses as provided for in this article. In establishing the annual assessment for any assessment year, the board of directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for the future needs.

(e) The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (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, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Collection of Assessments. Both annual and special assessments may be collected on a semiannual basis or in any other manner directed by the Board of Directors.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Section 3 and 4 of this Article, the presence at the meeting 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 forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in Section 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein for Lots shall be paid in equal semiannual installments and the payment of such shall commence as to each Lot on the first day of the first month following the date that all Common Area in the phase that the Lot in question is located has been conveyed to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of nine percent (9%) per annum. The Association may bring an action against the owner personally obligated to pay the same, and interest, costs, late payment charges and reasonable attorney's fees of any such action shall be added to the amount of such assessment. If any law permits the filing of a lien and the foreclosure of such lien, or other similar action, as a method of enforcement of the Association's right to collect assessments, the Association may use such remedy. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the common area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The sale or transfer of any Lot shall not affect the lien of the assessments provided for herein. However, said lien shall be subordinate to the lien of any first mortgage on such Lot. The sale or transfer of any Lot pursuant to foreclosure under a first mortgage or any proceeding or sale in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sales or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due for from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt form said assessments.

ARTICLE VIII

RESERVE ACCOUNT DEPOSIT

At the time of the real estate closing, when the initial purchaser acquires fee simple title to a Lot after construction of a residence thereon, and becomes an Owner, such Owner shall contribute to the Association a sum equal to one-sixth (1/6) the then annual assessment of the Association for such Lot for the purpose of initial and nonrecurring capital expenses of the Association and for providing initial working capital for the Association.

ARTICLE IX

COMMON AREA MAINTENANCE, TAXES AND LIABILITY INSURANCE

The Association shall provide maintenance of the Common Area and all amenities and structures located thereon. The Association will pay all ad valorem taxes and assessments levied against the Common Area, and the Association will procure and maintain in effect a public liability insurance policy covering the Association's liability as owner of the Common Area.

ARTICLE X

ARCHITECTURAL CONTROL

For the purpose of insuring the development of the Subdivision as a residential area of high standards, the Declarant shall exercise architectural control over the structures and other improvements placed on the Lots. Declarant, at or prior to the conveyance of its last lot in the subdivision, may, by instrument recorded in the Wake County Registry, convey all its rights under Article X and under Article XI hereof to Arlington Hills Homeowners Association, Inc., to be exercised by its duly designated Architectural Control Committee. The Owners of all Lots, except Declarant, by acceptance of title thereto or by taking possession thereof, covenant and agree that no building, wall, structure, plantings or other improvements,including but not limited to residences, other buildings, fences, screen plantings, mail boxes, newspaper boxes, and outside lighting shall be placed upon such Lot, unless and until the plans and specifications therefor and the site plan have been approved in writing by the Declarant or a majority of the Architectural Control Committee, if established. Each such building, wall, structure, plantings or other improvement shall be placed upon said Lot only in accordance with the plans and specifications and site plan so approved. Refusal of approval of plans and specifications by the Declarant or such committee may be based on any ground, including purely aesthetic grounds caused by lack of harmony with surrounding residences, which, in the sole and uncontrolled discretion of the Declarant or such committee, shall be sufficient. No alteration or color changes in the exterior appearance of any improvement constructed upon a Lot shall be made without like approval. Plans for such approval shall be submitted to the Declarant or the committee at the Declarant's office in Wake County, North Carolina, unless Declarant or the committee shall establish a different place to submit such plans. In the event Declarant or said committee fail to approve or disapprove such plans and specification within thirty (30) days after the same have been submitted to them, approval will not be required and this provision shall be deemed to have been fully complied with.

It is the intention hereof that the Declarant and Architectural Control Committee shall have the right to control all architectural aspects of any improvements constructed in the Subdivision, including, without limitation, height, site planning, setback requirements, open space, exterior design, and landscaping, including the right to establish minimum landscaping criteria for each Lot, provided that the same shall be applied equitably and without discrimination to all Lots. It is the purpose of these restrictions that the entire Subdivision may be developed as a planned community.

<u>Note</u>: The right of the Declarant to withhold approval of any proposed initial structures, facilities, or improvements or of the location thereof is absolute.

ARTICLE XI

USE RESTRICTIONS

Section 1. Residential Building Sites. Each Lot shall constitute a residential building site (hereinafter called "building site") and shall be used for residential purposes only. The lay of the lots as shown on the recorded plat shall be substantially adhered to; provided, however, with the prior written approval of Declarant, the size and shape of any building site may be altered; provided further, that no building site or group of building sites may be re-subdivided so as to produce a greater number of building sites than shown on the aforementioned recorded map. More than one lot may be used as one building site, provided the location of any structure permitted thereon is approved in writing by Declarant, or the Architectural Committee referred to in Article X hereof, if such approval rights have been assigned to it by Declarant; and, provided, further, that Declarant shall have the right, specifically reserved in Section 18 of this Article XI hereof, to make any relocations of easements that it determines to be necessary by reason of such use. Except as provided in this paragraph, no structure shall be erected, altered, placed, or permitted to remain on any building site, other than one detached single family dwelling not to exceed two and one-half stores in height, and, unless otherwise approved by the Declarant, a private garage for not more than two cars.

Section 2. Existing and Additional Improvements. Following the initial construction and installation of the dwelling house and improvements, no alteration or modification thereof, including change of exterior color, shall be undertaken (other than normal maintenance and repairs), and no construction, erection, or installation of any additional new structures, facilities, or other improvements shall be undertaken without the prior express written consent of the Declarant.

Section 3. Erosion Control. During site preparation and initial construction, the owner of the building site and the builder shall take such action as may be required by Declarant to control, inhibit, or prevent erosion and sedimentation of streams and impoundments resulting from erosion. Each owner shall maintain his building site in such manner as to prevent erosion of soil into any Common Areas. If, in the opinion of the Declarant, an owner does not properly maintain his building site as herein provided, then Declarant may have the required work done, and the costs thus incurred by Declarant shall be paid by the owner of the building site. Declarant shall have all easements, including the right of entry, necessary to enter upon the building site and perform such work or cause such work to be performed.

Section 4. Grading and Filling. No grading, filling, or other alteration of the topography or elevation of any building site shall be undertaken prior to or during initial construction without the prior express written approval of Declarant.

Section 5. Removal of Trees. No trees or other vegetation, except weeds, deadwood, underbrush, or grass, may be cut or removed from any building site prior to or during initial construction unless written approval of Declarant is first secured. Following initial construction of improvements on any building site, no trees having a trunk diameter exceeding six (6) inches (18 3/4 inches in circumference), four (4) feet above ground level, shall be removed therefrom without the prior express written approval of Declarant unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

Section 6. Removal of Vegetation from Common Area. No owner of any building site, other than Declarant shall injure, cut, or remove, or suffer or cause to be injured, cut or removed, any trees, shrubs, flowers, or other vegetation from any Common Area unless with the prior written permission of the Arlington Hills Homeowners Association, Inc. The foregoing provisions of this Section 6 shall be subject to the provisions of the Declaration of Restrictive Covenants recorded in Book 5004, Page 12, Wake County Registry and that certain General Warranty Deed of Easement recorded in Book 5004, Page 6, Wake County Registry.

Section 7. When Approval Implied. Where any owner or builder must secure prior approval of Declarant under these covenants before undertaking any activity or work, request for approval shall be submitted in writing, and failure of Declarant to give or deny approval within thirty (30) days following receipt of the written request shall be deemed to constitute approval, unless suit has been or is instituted to enjoin the proposed activity or work or the completion thereof.

Section 8. Signs. Except for unit identification signs required by the City of Raleigh Code as a regulated sign, no sign, billboards, or posters of any nature shall be erected, placed, exhibited, or maintained on any building site except with the prior approval of, and in conformity with the size, design, and format, and for such time period, as is or may be prescribed from time to time by the Declarant.

Section 9. Nuisances. No noxious or offensive activity shall be carried on upon any building site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no trucks, pick-ups, tractors or commercial vehicles displaying the name of any firm or produce may be stored or regularly parked on the premises except in garages or well screened approved enclosures. No business activity or trade of any kind whatsoever shall be carried on upon any building site except those activities normal and incident to the initial construction and sale of dwelling units on the site.

Section 10. Temporary Buildings Prohibited. No trailer, basement (unless said basement is a part of a residence erected at the same time), tent, shack, barn or other outbuilding shall be erected or placed on any building site covered by these covenants, except as specifically permitted herein.

Section 11. Pets and Other Animals. No animals or poultry of any kind shall be kept or maintained on any part of said property, other than dogs or cats confined within fenced areas and house pets kept in the home of the owner. No animals or poultry of any kind shall be kept or maintained for commercial purposes.

Section 12. Fences. No fence, wall, hedge, or mass planting shall be permitted except upon the prior approval of the Declarant. After approval of materials, design and height by Declarant, a fence may be located along the property lines, or such other location as may be approved by Declarant if the topography of the Lot is such that the fence should vary from the property lines; but no fence will be permitted to be nearer to the street than the front of the dwelling house on the Lot.

Section 13. Parking. Owners of building sites shall not park their boats, and other vehicles, except automobiles, on the streets located in the residential areas of this subdivision. Further, boats, trailers, campers and recreational vehicles shall be parked only in garages or approved enclosures and not on any part of a lot exposed to view either from the street, another lot or from any common area.

Section 14. Lot Owner's Responsibility. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on his lot, which condition shall tend to substantially decrease the beauty of the subdivision as a whole or the specific area. Non-operating cars, unused objects or apparatus, or any portion thereof, shall not be permitted to remain on any lot. All lots shall be kept clean and free of garbage, junk, trash, debris, or any substance that might contribute to a health hazard or the breeding and habitation of snakes, rats, insects, and the like. Each lot owner shall cause his lawn to be mowed as needed, cause the maintenance and protection of landscaping insuring proper drainage of the lot so as to prevent soil erosion, and cause the maintenance of the dwelling and any other structures and improvements located on his lot.

Section 15. Additional Restrictions. No lot shall have more than one television or radio antenna, and that antenna must be attached to the residence; TELEVISION OR RADIO RECEPTION

"DISCS" OR "DISHES" SHALL NOT BE ALLOWED ON ANY LOT, NOR MAY THEY BE ATTACHED TO ANY DWELLING OR STRUCTURE; no lot shall have any other objects attached to the exterior of any building and specifically prohibited are lightening rods, weather vanes, and high powered antennas; no outside clothes lines shall be installed on any lot; no window air conditioning units shall be permitted if they may be seen from any roadway in the direction in which they face.

Section 16. Common Area. Any Common Area, from the time of its conveyance to Arlington Hills Homeowners Association, Inc. shall be the exclusive property of the Association, and no building site owner in this subdivision shall have any right to use the Common Area except in accordance with the By-Laws, rules and regulations of the Homeowners Association.

Section 17. Utility Connections. All telephone, electric and other utility lines and connections between the main utility lines and the residence and any other building located on each building site shall be concealed and located underground so as not be visible.

Section 18. Easement Reserved. Declarant, for itself, its successors and such of its assigns as are designated by instrument recorded in the Wake County Registry, hereby reserves, and is given a perpetual easement, privilege, and right, including right of entry, for utility, television antenna system, and drainage purposes, on, in, and under a ten (10) foot strip along the rear line of each building site and on, in, and under a five (5) foot strip along the interior side lot line of each building site and/or as shown on the recorded subdivision map. In the event that more than one lot is used as one building site as provided in Section 1 hereof, or in the event Declarant, in its sole discretion, deems it necessary and appropriate, to relocate, remove and/or re-establish the easement provided for herein or the easements provided on the map recorded of the subdivision, which easements may be located on, in and under the lots or recombination of lots utilized as the building site. A Lot owners of Lots should not construct permanent structures on any reserved easement area, because any structure that prohibits use of the easement area for one or more of the purposes set forth herein may be removed and not replaced without any compensation or liability to the Lot owner for such removal.

Section 19. Rights Exclusive. All rights herein created for, held by, or reserved to Declarant shall belong exclusively to Declarant and to such person, firm or corporation to whom they are expressly conveyed by instrument recorded in the Wake County Registry, and none of them shall be deemed transferred to the purchaser of any property unless the instrument effecting such transfer expressly recites the transfer of such rights. By way of illustration and not of limitation, at the time these covenants are drawn, it appears probable that when the development of all of Arlington Hills Subdivision has been fully constructed, Declarant will have no further economic interest in the subdivision and may then wish to transfer to Arlington Hills Homeowners Association, Inc. its right to appoint an Architectural Committee, its right to prohibit erosion, and other such rights. The conveyance of Common Area to the Arlington Hills Homeowners Association, Inc. shall not operate as a transfer to the Arlington Hills Homeowners Association, Inc. of these rights, however, since these rights may be transferred only by an instrument recorded in the Wake County Registry reciting specifically that these rights are being transferred.

ARTICLE XII

RULES AND REGULATIONS

The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

ARTICLE XIII

EASEMENTS

Section 1. Walks and Utilities. All of the Properties, including Lots and common areas, shall be subject to such easements for walk ways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cable television and other public utilities as shall be established prior to conveying the Properties covered by this Declaration to the Association, and the Association shall have the power and authority to grant and to establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use, proper maintenance and enjoyment of the Properties.

Section 2. Easement for Governmental Agencies. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its Lot line, the owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repairs, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Declarant reserves the right to subject the real property covered by this Declaration to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each Lot.

ARTICLE XIV

RIGHTS OF INSTITUTIONAL LENDERS

"Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other reputable mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the owner of any Lot, such Institutional Lender or Institution Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association during normal business hours.

(e) To be given notice by the Association of any substantial damage to any part of the Common Areas.

(f) To be given notice by the Association if any portion of the Common Area, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

(g) To be given notice of any condemnation or casualty loss that affects either a material portion of the Properties or the unit securing its mortgage.

(h) To be given notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(i) To be given notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

(j) To be provided at cost current copies of the Declaration, Bylaws and other rules concerning the Property.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein identifying the Lot upon which such Institutional Lender or Institutional Lenders hold any mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Enforcement. 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 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. Insurance. In the event the Association becomes the owner of any buildings, or other improvements, or personal property, located within the common areas, the board of directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the board of directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use.

The board of directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the board of directors; the manager, if any; and the

Association against any liability to the public or to homeowners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use to the common areas and facilities, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another insurance shall be determined by the Board of Directors, but in no even shall it be less than $1 million per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the board of directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the board of directors shall be paid by the board of directors as a common expense of the Association.

Section 3. 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 4. FHA/VA Approval. Notwithstanding any provision in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of this subdivision for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration: Annexation of additional properties, exchange of Common Areas for other portions of the Property, dedication of Common Areas, amendment of this Declaration of Covenants, Conditions and Restrictions, mergers and consolidations, mortgaging of Common Area and dissolution.

Section 5. Greenway - City of Raleigh Approval. Notwithstanding any other provisions of this Declaration, the Association, Owners, Members, tenants of Members, Member's guests or invitees, or families of Members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without the prior written consent of the City of Raleigh:

(a) Grant easements of any nature whatsoever;
(b) Remove any trees or vegetation;
(c) Erect gates, fences or other structures;
(d) Place any garbage receptacles;
(e) Fill or excavate;
(f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as are deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

Section 6. Density Transfers. The Properties is a part of a cluster unit development approved by the Raleigh City council in which residential density transfers are permitted. Therefore, even though some sites may appear to contain sufficient land area to construct additional dwelling units, prior approved density transfers within the cluster unit development may in fact preclude City of Raleigh approval of additional dwelling units.

Section 7. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the owners of not less than less sixty-six and two-thirds percent (66-2/3%) of the Lots. All amendment shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 8. Certification of Amendment. If any amendment to these covenants, conditions and restriction is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF ARLINGTON HILLS

By authority of its Board of Directors, Arlington Hills Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of ____ percent of the Lots of Arlington Hills and is, therefore, a valid amendment to the existing covenants, conditions and restriction of Arlington Hills.

ARLINGTON HILLS HOMEOWNERS
ASSOCIATION, INC.

By______________________
President

ATTEST:

____
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Arlington Hills.

Notwithstanding the foregoing, no amendment shall be effective unless approved by the City Attorney of Raleigh (so long as this is required by the Raleigh City Code): provided, however, that if any amendment is submitted to said City Attorney and is neither approved or disapproved within thirty (30) days from the date of submission, it shall be conclusively presumed that the City Attorney has approved it.

Section 9. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated to a management agent some or all of the responsibility for the handling of funds, fidelity bonds shall be require for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less that the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three month's aggregate assessments on all units plus reserve funds.

Fidelity bonds required herein shall:

1. name the association as an obligee;
2. contain waivers by the insurers of the fidelity

bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expression;

3. provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secure by any Lot.

The premiums all such fidelity bonds for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

Section 10. Prohibition Against Association Entering into Long Term Contract While Declarant in Control of Board of Directors. Until such time as the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or three years from the date of conveyance of the first Lot by Declarant, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty, upon not more than 90 days notice to the other party.

Section 11. No Vehicular Access to Lead Mine Road. There shall be no vehicular access from any Lot or from the Common Area onto and from Lead Mine Road.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this the 6th day of January, 1992.

CENTURA BANK,
a banking corporation formed under the laws of the United States of America

By: James R Seaward
Sr. Vice President

ATTEST:

[signature]
Asst. Secretary

NORTH CAROLINA

~~WAKE~~ NASH COUNTY

I, the undersigned, a Notary Public in and for the said Sate and County, do hereby certify that W. L. WALKER, JR. personally appeared before me this day and acknowledged that he is ASST. Secretary of Centura Bank, a corporation, and that by authority duly given as the act of the corporation, the foregoing instrument was signed in its name by its JR. VICE President, sealed with its corporate seal, and attested by W. L. WALKER, JR as its ASST. Secretary

WITNESS my hand and notarial seal this the 6th day of January, 1993.

BARBARA B. LAMBETH
Notary Public
NASH COUNTY, N. C.

Barbara B. Lambeth
Notary Public

My Commission Expires: 9-1-94

BARBARA B. LAMBETH
Notary Public
NASH COUNTY, N. C.

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Barbara B. Lambeth Notar(y)(ies) Public is (are) 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.

KENNETH C. WILKINS, Register of Deeds

By Tasha B. Medlin
~~Asst.~~/Deputy Register of Deeds

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EXHIBITS A, B AND C TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ARLINGTON HILLS, DATED JANUARY 6, 1992

EXHIBIT A:

BEING all of Lots 1 through 27, inclusive, as shown of plat of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry.

EXHIBIT B:

BEING all of the tract designated as "FUTURE DEVELOPMENT AND GREENWAY 15.786 ACRES," which includes all the tract designated as "GREENWAY 6.749 ACRES," as shown on plat of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry.

EXHIBIT C:

BEING all the land shown on the plat of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry, <u>SAVE AND EXCEPT</u> therefrom the following described tracts or parcels of land:

TRACT 1: BEING all of Lots 1 through 27, inclusive, as shown of plat of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry.

TRACT 2: BEING all of the tract designated as "FUTURE DEVELOPMENT AND GREENWAY 15.786 ACRES," which includes all the tract designated as "GREENWAY 6.749 ACRES," as shown on plat of Arlington Hills Phase 1, recorded in Book of Maps 1991, Page 1339, Wake County Registry.