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NORTH CAROLINA

WILLIE L. COVINGTON  
DURHAM REGISTER OF DEEDS  
DURHAM COUNTY, N.C.

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
ENO COMMONS

THIS DECLARATION, made this 24<sup>TH</sup> day of March, 1997, by ZANN DEVELOPMENTS, LLC, a North Carolina limited liability company, hereinafter called "Developer"

W-I-T-N-E-S-S-E-T-H

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create therein a residential community to be known as Eno Commons, subdivided into residential building lots, open spaces and common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II (together with such additions as may hereafter be made) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated, or will incorporate within one month hereafter, under the laws of the State of North Carolina, as a non-profit corporation the Eno Commons Homeowners Association, Inc. for the purpose of exercising the functions aforesaid;

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NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

#### ARTICLE I. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the Eno Commons Homeowners Association, Inc.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof;
- (c) "Common Properties" shall mean and refer to those areas of land and improvements thereon now or hereafter shown on any recorded subdivision plat of the Properties as (i) private roads, (ii) property designated on said plat as "Common Area", "Common Property," "Common House," "Open Area," "Pedestrian Way," and/or (iii) property which is hereafter deeded to the Association and is intended to be devoted to the common use and enjoyment of the owners of the Properties. Common Properties as thus defined shall include, but not be limited to, a "common house" facility to be built upon a designated area of the Common Property by the developer, geothermal system infrastructure (to the extent that said geothermal infrastructure is located within designated common property area and serves two or more dwellings and/or serves structural improvements situated within the common property area), automobile parking areas, a pedestrian walkway and any roads for vehicular traffic which are to be privately maintained by the Association but dedicated for access from Lots and Common Properties to public roads as shown in recorded subdivision plats of Eno Commons ;
- (d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined;

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui qui trust unless and until there has been a transfer of title pursuant to foreclosure or any proceeding in lieu of foreclosure;

(f) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article III, Section 1, hereof;

(g) "Associate Member" shall mean and refer to those persons over the age of eighteen (18) years who are not Owners but who may be issued a permit by the Association to use the facilities of the Common Properties upon payment of Associate Member fees as more particularly described herein.

(h) "Mortgagee" shall include the noteholder or cestui qui trust secured by a Deed of Trust.

(i) "Rules and Regulations" shall refer to such additional rules, regulations and restrictions as may from time to time be adopted by the Association pursuant to Article X of these Covenants.

## ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

*Section 1. Existing Property.* The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Durham, North Carolina, and is more particularly described in Description Exhibit A attached to this Declaration. All of the property described on said Description Exhibit A shall hereinafter be referred to as "Existing Property."

*Section 2. Additions to Existing Property.* Additional lands may become subject to this Declaration in the following manner:

Upon approval in writing of the Association pursuant to a vote of two-thirds (2/3) of each class of its Members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the

jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions which shall extend the scheme of the covenants and restrictions of this Declaration to such property by adopting these Covenants and Restrictions in whole or in part by reference.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

*Section 3. Mergers.* Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Existing Property as hereinafter provided.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

*Section 1. Membership.* Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Membership is applicable to the Developer for the land owned by it, or its successors and assigns, in the Existing Property.

*Section 2. Associate Membership.* From time to time, the Association may accept

