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NORTH CAROLINA

WILLIE L. COVINGTON  
DURHAM COUNTY 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

and approve applications for Associate Membership from persons who are not Members. Such persons could include, but not be limited to, neighbors of Eno Commons or renters and tenants of Eno Commons Lots. Such persons, whose applications for Associate Membership are approved by the Association, shall be Associate Members and shall have such rights and privileges as may be designated from time to time by the Association, or in Rules and Regulations adopted by the Association. Associate Members may be required by the Association to pay fees or dues to maintain Associate Membership, and may in exchange for such payments be allowed use of the Common Area facilities. Associate Members shall also be allowed to attend and participate in meetings of the Association in the same manner as Members, except that Associate Members shall not be permitted any voting privileges otherwise enjoyed by Members.

*Section 3. Voting Rights.* The Association shall have two classes of voting Membership:

*Class A.* Class A Members shall be all those Owners as defined in Section 1 above, with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for Membership by said Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and 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 such Lot.

*Class B.* Class B Membership shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds interests required for Membership. The Class B Membership shall cease and become converted to Class A Membership at the earlier occurrence of the following events:

(a) when the total votes outstanding the Class A Membership equal the total votes outstanding in the Class B Membership, or

(b) five years from the date of recording of this Declaration.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interests required for Membership under Section 1 above.

ARTICLE IV. USE RESTRICTIONS

Section 1. No Lot shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations, nor shall any Member, Associate Member, or any guest or invitee of a Member or Associate Member condone or permit the conduct of any criminal activity within the Eno Commons Properties.

Section 2. No noxious or offensive trade or activity shall be carried on upon or in any Lot or Common area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The Association will develop Rules and Regulations for specific provisions on noise and other nuisances.

Section 3. It is the intention of the Eno Commons community to provide the benefits of solar heating for its homes. Lot Owners shall not allow the construction of any structure or allow the planting of any vegetation which has a predicted terminal height which would affect another Lot's direct southerly solar access, except as approved by the Association. Solar access is defined as direct southerly solar radiation on a dwelling's primary collection area between 10:00 AM and 2:00 PM on December 21.

Section 4. No trailer, mobile home, basement, tent, shack or garage shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation, except that it is understood that house trailers, temporary buildings and similar structures shall be permitted for temporary construction work on a Lot or on the Common Property.

Section 5. No use of a Lot or Common Property shall be permitted which could degrade the water quality of any well, waterway or spring within Eno Commons or leading from Eno Commons onto adjacent properties or waterways, and no building or soil disturbance will be permitted that may cause the siltation of any waterway, spring, or well, except for construction of approved springhouses and wellhouses and their associated plumbing.

Section 6. No Lot or Common Property shall be used for any otherwise permissible business or commercial purpose that would result in the permanent or temporary use of more

than the number of parking spaces allotted for the Lot, except to the extent permitted by the Rules and Regulations of the Association, or by special permission of the Association.

*Section 7.* No Eno Commons Member or Associate Member shall disturb the vegetation flora within a Common Property, vegetated or stream buffer, or allow trash accumulation, structures, debris or other obstructions to be placed or allowed to remain within a Lot or within any Common Property, buffer or easement which may adjoin his or her Lot, or do any act which contravenes governmental regulations on the use and care of Common Properties, buffers and easements.

*Section 8.* Each Owner of a Lot shall at all times maintain the lot and structures thereon in a well-kept condition. No portion of any Lot shall be used or maintained as a dumping ground for rubbish, building materials or other refuse. Dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the Owner. Trash, garbage, recyclables or other waste shall be kept in sanitary containers which are screened from the view of the Common Properties and are located behind the main dwelling away from the Pedestrian Way. All waste shall be promptly and regularly removed from each Lot either by regular municipal trash and/or recyclable collection, or by action of the Member or Associate Member (or tenant, guest or invitee of said Member or Associate Member) responsible for the generation of such waste. It is permissible for biodegradable waste to be buried or composted as appropriate, providing that such burial or composting is done in such a way as not to be annoying or disturbing to other Members within Eno Commons. It is understood that if any Owner does not comply with the provisions of this section, the Association shall have the right to maintain the Owner's Lot, after providing adequate notice to the Owner as set forth in Rules and Regulations to be developed by the Association. After such notice and failure to cure, the Association shall have the right to assess the Owner the costs of such maintenance, including a reasonable Association administrative fee, which cost shall be added to and become an additional part of the regular annual assessments referred to herein.

*Section 9.* No truck over one (1) ton in capacity, nor any mobile or modular home, trailer, camper or boat shall be parked or permitted on any Lot or Common Property in Eno

Commons, except for passage and for temporary periods of loading and unloading and construction. It is understood that the Association may develop special areas and/or rules for the off-Lot storage of such trucks, trailers, campers or boats.

*Section 10.* No hunting shall be permitted within Eno Commons.

*Section 11.* No persistent pesticides or herbicides shall be used within Eno Commons, except for specified termite and other treatments as approved by the Association and included in its Rules and Regulations.

*Section 12.* No live hardwood trees five (5") inches or greater in diameter shall be cut, except as necessary for Association-approved structures, roadways or parking areas.

*Section 13.* No operable firearms may be kept, brought into or discharged within Eno Commons.

*Section 14.* No horses, poultry, fowl, swine, cattle or other animals, with the exception of usual domesticated household pets, shall be maintained or kept upon any Lot. The Association shall develop appropriate Rules and Regulations for keeping domesticated household pets, but nothing herein shall permit large-scale breeding of such pets, and all pet Owners shall take such steps to control their animals so as to prevent them from becoming a nuisance to their neighbors.

*Section 15.* The installation of any exterior antenna or satellite dish must be approved by the Association prior to said installation.

*Section 16.* No mercury vapor or sodium vapor lamps, or lighting of greater than 200 watts per bulb, shall be used outdoors, except as may be approved by the Association.

*Section 17.* Automobiles used or owned by residents of Eno Commons shall not be parked on the Lots, but shall instead be parked in designated parking areas. The Association shall have the discretion and right, upon a special showing of need acceptable to the Association, to permit an automobile owned by an Eno Commons resident to be parked on a Lot. The Association shall have the overall responsibility for determining the number of available parking spaces, assignment of automobiles to these parking spaces, and other rules regulating the parking of automobiles, as part of its Rules and Regulations. In addition to said Rules and Regulations which are to be developed for automobile parking, each Lot Owner



shall be responsible for providing adequate off-street or off-development parking for all automobiles not assigned a designated parking area by the Association, and for the parking of other vehicles of every kind or nature owned by the Lot Owner as well as vehicles owned or used by any Member of his or her household or a tenant of the premises of Lot Owner, including, but not limited to, all automobiles, trucks, motorcycles, motor scooters, and bicycles. No vehicular parking shall be permitted in the streets or roadways of Eno Commons, except with the express permission of the Association. No motor vehicles shall be operated off of designated paved roadways or parking areas except for temporary loading and unloading or for emergency vehicles. However, off-road agricultural uses shall be allowed, such as by a tractor or mower.

#### ARTICLE V. CONSTRUCTION AND OCCUPANCY REQUIREMENTS

Lot Owners shall have two (2) years from the date of recording of their deed to a Lot to construct a home on the Lot and obtain a certificate of occupancy from the appropriate governmental agency. If a Lot Owner fails to comply with this provision, the Association shall have the right and option to demand the noncomplying Lot Owner(s) to convey the Lot to the Association in exchange for the purchase price originally paid, less the payoff amount of any liens or encumbrances on the Lot and less any prorated and/or delinquent taxes attributable to the Lot.

Lot Owners who do not actually reside at Eno Commons may rent their dwellings for a period not to exceed two (2) years, unless permission to extend this period is granted by the Association. The Association shall be informed by the Owner of the identity of all lessees, and all such lessees shall be provided by the Owner with a copy of this Declaration, the ByLaws of the Association and the most recent copy of the Association Rules and Regulations. Lessees shall be responsible for compliance with the provisions contained in all such documents, and the Owner shall be ultimately responsible to the Association for any default or deviation from such provisions on the part of his or her tenant. Upon approval of the Association as otherwise provided herein, the lessee may become an Associate Member of the Association.

**ARTICLE VI. PROPERTY RIGHTS IN THE COMMON PROPERTIES**

*Section 1. Members' Easements of Enjoyment.* Subject to the provisions of Section 3 below, every Member shall have a right and easement of enjoyment in and to the Common Properties, including easement rights of vehicular, pedestrian and bicycle access, ingress and egress over private roads within the Eno Commons development to and from public roads, and such easement shall be appurtenant to and shall pass with the title to every Lot.

*Section 2. Title to Common Properties.* The Developer shall relinquish and convey the legal title in the Common Properties to the Association upon completion by Developer of the improvements designated by Developer to be constructed and installed upon the Common Properties, including but not limited to the Common House, any common recreation facilities, utility and geothermal service, pedestrian way, landscaping, and those private roads within Eno Commons which provide access from Lots and Common Properties to public roads.

*Section 3. Common Properties, Easements, and Buffers.* The recorded plats of Eno Commons may lay off and create Common Properties, landscape islands, sign easements, pedestrian and non-motorized vehicular easement pathways, vegetated buffers, stream buffers or public sewer or utility easements, which are hereby established by the Developer in accordance with the governmental requirements of the City of Durham. Developer reserves the right to place improvements within and/or to modify such Common Properties, easements and buffers consistent with governmental regulations. The Association shall be charged with the responsibility for maintaining landscape and sign easements, buffer areas and pedestrian and non-motorized vehicular easement pathways.

*Section 4. Subdivision of Two More Lots in Common Property.* At the time the development plan for Eno Commons was approved by the City of Durham, the zoning of the Eno Commons property allowed for twenty-four (24) building lots to be subdivided. The Developer has elected as part of its development plan to subdivide only twenty-two (22) building lots. From and after the conveyance of the Common Property from Developer to the Association, the Association shall have the right and power, subject to the zoning laws then in effect, to subdivide, plat, sell and convey two (2) more building lots from the Common

Property. Any lots so subdivided shall become a Lot, and any person or entity acquiring title to such a Lot will become an Owner, all within the meaning of this Declaration, and subject to all the appurtenant rights, privileges and obligations appertaining to such Lot and Owner. No such lot shall be subdivided, sold and conveyed unless an instrument signed by Members entitled to cast at least Seventy (70%) percent of the votes of each class of Membership has been recorded, agreeing to such subdivision, plat, sale and conveyance, and unless written notice of the proposed subdivision, plat, sale and conveyance is sent to every Member at least thirty (30) days in advance of any action taken. If any such sale or conveyance is determined to be subject to income taxation, the full estimated tax so due shall be paid immediately by the Association to the taxing authorities from the proceeds of sale. Any remaining net proceeds realized from the sale of additional Lots subdivided and sold pursuant to this Section shall be used only to augment or supplement Association capital reserves and shall only be used for the common stated purposes of the Association as set forth in this Declaration. No part of any such sale proceeds shall inure or pass through to the personal benefit of any one or more Members, nor shall any action be taken in such sale which might endanger any non-profit homeowners' association status conferred upon the Association by the State of North Carolina.

*Section 5. Extent of Members' Easements.* The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and ByLaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) the right of the Association, as provided in its Articles and ByLaws, to suspend the voting rights of any Member for a period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) the legal right of an Owner of property shown on said plat to include portions of the Common Properties as may be necessary for said Owner to qualify under governmental regulations such as setback lines, open space, parking or other aspects which may be needed for inclusion for a building permit to be secured to rebuild a damaged structure on a Lot;

(e) the rights in the Association for subdivision and sale of two lots as provided in Section 4 of this Article; and

(f) the right of the Association to dedicate or transfer all or any part of the Common Properties owned by it to any public agency, authority or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast seventy (70%) percent of the votes of each class of Membership has been recorded, agreeing to such dedication, transfer, purposes or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

#### ARTICLE VII. COVENANT FOR ASSESSMENTS

*Section 1. Regular Annual Assessments.* The Association, by majority vote of its Board of Directors, shall have the power to levy an assessment against all Lots. This assessment shall be set each year and shall be payable on an annual, semi-annual, quarterly or monthly installment basis, as determined by the Association at the time the assessment is set. This assessment is referred to herein as the regular annual assessment. The funds raised by the levy of such regular annual assessment are to be used for such purposes as the Association may deem necessary to defray normal and reasonable expenses associated with the enforcement of this Declaration and the maintenance and upkeep of Common Property,

including, but not limited to, road maintenance, maintenance of the common recreation facilities, ad valorem taxes, insurance premiums, fees of accountants, attorneys, or other professionals, repair of signs, grass cutting and brush and tree clearing as needed, and in general for the promotion of the recreation, health, safety and welfare of the residents of Eno Commons. These regular annual assessments shall be a lien on the Lots as hereinafter provided. These regular annual assessments shall be set by the Board of Directors no later than December 1 of each year prior to the year the assessment is to become due. Depending on whether the assessment is set by the Board of Directors to be paid on an annual, semi-annual, quarterly or monthly installment basis, the assessments shall be due and payable on the date specified by the Board, and shall be delinquent forty-five (45) days from the said due date. The Board of Directors shall take reasonable steps to timely notify Lot Owners of the amount of any regular annual or special assessments due for each year, but no Owner or Lot shall be excused from the payment of any regular or special assessment, or interest and costs accruing thereon as the result of delinquency, because of any failure of notice. Any delinquent regular annual assessment, or special assessment as provided below, shall bear interest from the date of delinquency payable to the Association at such rate as may be set by the Association, not to exceed the maximum interest rate permitted by the regulations of the VAFHA or other lenders, as the same may from time to time be amended.

The Developer shall be exempt from the requirement of paying any regular annual or special assessments on Lots owned by it or assessments that have already accrued on lots to which Developer obtains title through deed in lieu of foreclosure, foreclosure or other default.

In addition to the fixed amount of the regular annual assessment as provided herein, the Association shall have the power to add to the lien of a regular annual assessment cleanup costs incurred under the provisions of Section 8, Article IV of this Declaration.

For the calendar year 1997, the regular annual assessment shall be One Thousand Eighty (\$1,080) Dollars, payable at Ninety (\$90) Dollars per month, prorated to the end of the month and paid in advance for another month at the closing of each Lot purchase by an Owner from the Developer. The regular annual assessment may be increased by the Board of Directors of the Association without a vote of Membership to an amount not more than ten

(10%) percent in excess of the assessment for the previous year. A majority of the Association must approve any increase in the annual assessment in excess of a ten (10%) percent increase, and for the purposes of voting on such a ten (10%) percent increase in the assessment, the Developer shall not have the right of preferred voting, but shall be entitled to only one vote for each Lot owned by the Developer.

*Section 2. Special Assessments.* In addition to these regular annual assessments, the Association may by seventy (70%) percent affirmative vote of its Membership approve a special capital expenditure for the benefit of Eno Commons or the Association, and finance the same with a special assessment against the Lots, which said special assessment shall become payable in the same manner as but in addition to the regular annual assessment, and shall be a lien of equal dignity with the regular annual assessment as hereinafter provided.

*Section 3. Discretionary Partial Rebate of Assessment.* At the time the Association sets the regular annual assessment, the Association may, within its sole and complete discretion, evaluate the cost-savings to the Association of work which may have been done by Members during the previous year that otherwise was budgeted in that previous year for outside expenditure. After such an evaluation, the Association shall have the authority to return cost-savings to the Members, said return of value to be in the nature of a rebate to Members on the regular annual assessment paid by them. Any rebate on assessment granted by the Association under this section is solely within the discretion of the Association, and shall not under any circumstances be considered to have created a right or entitlement in any Member to receive any other rebate. No rebate granted hereunder shall be considered to have lowered the amount of the regular annual assessment for the purposes of Section 1 of this Article.

*Section 4. Lien for Assessments of Association/Collection.* Each Lot Owner, by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, shall be deemed to covenant and agreed to become a Member of and to pay to the Association all regular annual or special assessments as may be set by the Association as provided above. Such assessments shall automatically become a lien upon the Lot on account of the Ownership of which such assessments are made. In the event of delinquency of a lien created

hereunder, the Association may proceed to foreclose the lien in the same manner as foreclosure of a Deed of Trust with power of sale as provided by Chapter 45 of the General Statutes of North Carolina, as the same may from time to time be amended. It shall not be necessary for the validity or foreclosure of any such lien to file a claim or notice of lien, but the Association shall have the right, upon delinquency in the payment of any such assessment or lien, to file a claim or notice of lien with the Durham County Registry to provide constructive notice to the public of said lien and delinquency. In the event the Association pursues foreclosure of any lien created hereunder, it shall be entitled to the reimbursement of all costs of the action and reasonable attorneys fees incurred in prosecuting such foreclosure.

*Section 5. Subordination of Lien to Mortgagees.* The charges described in this Article and the lien thereof shall be subordinated to the lien of any mortgage or deed or trust now or hereafter placed upon the property of any parcel thereof; provided, however, that such subordination shall apply only to the charges which shall have become payable prior to the sale of such parcel pursuant to foreclosure of such instrument. Such sale shall not relieve the parcel from liability for charges thereafter becoming due hereunder nor the lien or any charge or installment thereof thereafter becoming due.

#### ARTICLE VIII. RIGHTS OF FIRST MORTGAGEES

*Section 1.* First mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

*Section 2.* Upon its written request, the holder of a first mortgage upon a Lot shall be entitled to written notification of any default by the Owner of said Lot in the performance of his obligations pursuant to these Covenants or the ByLaws of the Association, if such default is not cured within thirty (30) days.

*Section 3.* One or more first mortgagees of Lots may, jointly or singly, in respect to the Common Properties, pay taxes or other charges which are in default and have or may become a charge against same, pay overdue hazard insurance premiums or secure new hazard

insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association.

*Section 4.* Without having first received written approval from at least seventy (70%) percent of the first mortgagees (based upon one vote for each mortgagee) of the Lots, the Association may not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the real property which is owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, due or other charges which may be levied against the Owner of a Lot;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(d) fail to maintain hazard insurance on insurable improvements upon the Common Property in an amount less than one hundred (100%) percent of the current insurable replacement cost;

(e) use hazard insurance proceeds from losses to any Common Property for other than the repair, replacement or reconstruction of such improvements.

#### ARTICLE IX. PARTY WALLS

*Section 1. General Party-Wall Rules of Law to Apply.* Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.



*Section 2. Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

*Section 3. Destruction by Fire or Other Casualty.* If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

*Section 4. Weatherproofing.* Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

*Section 5. Right to Contribution Runs With Land.* The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

*Section 6. Arbitration.* In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

#### ARTICLE X. CONSTRUCTION CONTROL

No construction, which shall include clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article.

No construction within Eno Commons, including but not limited to dwellings, outbuildings, fences, walls or other structures, shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition, change or alteration to a previously approved

improvement be made, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been approved in writing by the Board of Directors of the Association as to harmony of external design and location in relation to surrounding structures and topography. The Board of Directors of the Association may delegate this authority to an architectural committee composed of three (3) or more representatives appointed by the Board. The Board of Directors or its architectural committee shall establish architectural standards and review procedures for such approvals. In the event the Board, or its designated architectural committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed by have been complied with fully. The Association shall have the right to bring action to enjoin any activity taken in violation of this Article.

During the period of Lot grading and construction of the residential structures on Lots, and during any construction thereafter, each Owner shall exercise and maintain such erosion control measures, including the erection of silt fences, as may be required by the Declarant or Association in order to minimize erosion and runoff. Compliance with the applicable erosion control ordinance shall not constitute automatic approval by the Declarant or Association, both of which reserve the right as part of architectural control granted hereunder to impose requirements and standards in excess of those minimally required by law.

Construction or improvements on any Lot must be completed within twelve (12) months of commencement of work. No lumber, stone, concrete or other materials and equipment used for building and construction shall be stored on any Lot in an exposed location, except for the purpose of construction on that Lot, in which case the materials and equipment shall not be stored for longer than the length of time reasonably necessary for the construction in which they are to be used. All building materials and machinery shall be removed promptly upon completion.

If the construction process on any Lot is shown to have damaged any portion of the roads or Common Properties, including the geothermal infrastructure, the Owner of the Lot for which the work was done shall be responsible for repairing said damages.

A maximum of two thousand (2,000) square feet of impervious surface (as defined by the applicable watershed regulations of the City and/or County of Durham) shall be allowed to be constructed on any one building Lot.

Each Lot shall contain only one dwelling unit, although it is understood that some lots may, with the approval of the Association, be constructed in an adjoining fashion as zero-lot-line structures.

Any outbuilding constructed on a Lot shall be of similar quality and materials as the approved homes at Eno Commons.

No carports or garages shall be located on a Lot, except as approved by the Association.

All containers or sites for fires shall be fitted with spark screens, masonry or metal enclosures or other suitable means of fire control.

Fences shall be allowed in accordance with standards approved by the Association.

All structures constructed on a Lot or Common Property must provide access to ground floor facilities for the reasonable use and enjoyment of persons in wheelchairs. Lot Owners will be required as part of the approval process hereunder to construct their homes to provide persons in wheelchairs entry to the ground floor of their dwellings.

#### ARTICLE XI. RULES AND REGULATIONS

The Board shall have the power, from time to time in the sole discretion of the Board, to formulate, publish, distribute and enforce reasonable Rules and Regulations concerning the use and enjoyment of each Lot and the Common Properties. All Members, Associate Members, and Owners shall be deemed to have read and understood all such Rules and Regulations and to be bound by them.

## ARTICLE XII. GENERAL PROVISIONS

*Section 1. Duration.* The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of ninety (90%) percent of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed change is sent to every Owner at least ninety (90) days in advance of any action taken.

*Section 2. Amendment.* These covenants and restrictions may be amended during the first twenty-five (25) year period by the vote of not less than seventy-five (75%) percent of each class of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which, including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Thereafter, these covenants and restrictions may be amended by the vote of at least fifty-one (51%) percent of each class of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which, including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Matters mentioned elsewhere in these covenants requiring the approval of first mortgagees or requiring a greater percentage of Members for approval shall be so governed. Any such amendment shall become operative and binding upon all Members and their properties when set forth in an Amended Declaration of Covenants and Restrictions and recorded in the office of the Register of Deeds of Durham County, North Carolina.

*Section 3. Notice.* Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

*Section 4. Enforcement.* Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restrictions, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or 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 5. Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

*Section 6. FHAVA Approval.* As long as there is a Class B Membership, and provided there is at least one FHAVA insured mortgage encumbering an Eno Commons Lot, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Property after the original subdivision plat submissions, and amendment of this Declaration of Covenants, Conditions and Restrictions.

*Section 7. Developer Rights.* While Class B Membership exists, and subject to the provisions of Section 6 of this Article, Developer reserves the right upon a showing of need, to change, amend or waive any of the foregoing restrictions as the same may apply to any particular Eno Commons Lot, and to grant encroachment rights on easements, Common Properties and buffers to the extent permissible by governmental regulations. Although such waivers and grants are within the sole discretion of Developer, Developer covenants to take into account when issuing such waivers or grants the effect any such waiver will have on adjoining Lot Owners and Eno Commons in general. In addition, all rights reserved herein to Developer (including those things requiring Developer approval) can be transferred by instrument recorded in the Durham County Registry to any other party designated by Developer, and shall automatically pass to any entity which may succeed Developer by reason of foreclosure of a development deed of trust.

IN WITNESS WHEREOF, ZANN DEVELOPMENTS has caused this instrument to be  
duly executed as of the day and year first above written.

(SEAL)

ZANN DEVELOPMENTS, LLC, a North Carolina limited liability  
company

By: *Sherri Zann Rosenthal*  
Sherri Zann Rosenthal, Manager

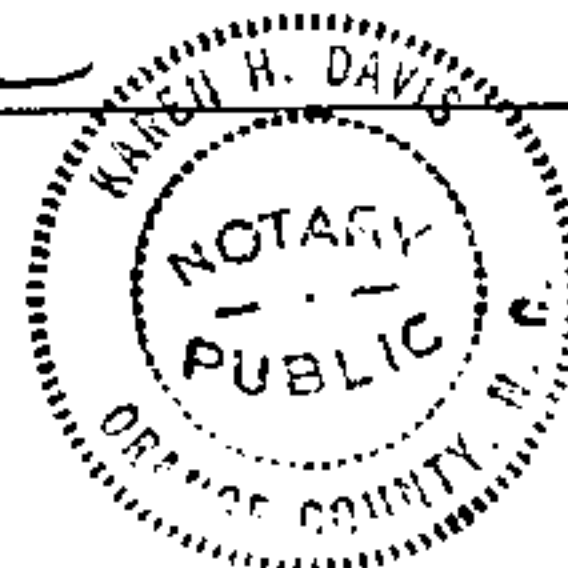
NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public, do hereby certify that Sherri Zann Rosenthal, Manager of Zann  
Developments, LLC, a North Carolina limited liability company, personally appeared before  
me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 24<sup>th</sup> day of March, 1997 .

*Karen H. Davis*  
Notary Public



My commission expires: 6-27-97

State of North Carolina - Durham County

The foregoing or annexed certificate of  
*Karen H. Davis*  
A Notary (Notaries) Public for the Designated Governmental  
units is (are) certified to be correct.

This the 15 day of March A.D. 19 97  
WILLIE L. COVINGTON  
Register of Deeds  
By: *Jane Baker*  
Assistant Deputy  
Register of Deeds

EXHIBIT "A"  
TO  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR ENO COMMONS  
DESCRIPTION OF EXISTING PROPERTY

BEGINNING at an iron pin found at the southeastern corner of Dunnagan (Real Estate Book 1350 at page 570) in the western line of McCurdy (Real Estate Book 1769 at page 972); thence with the McCurdy line the following four (4) calls: South  $04^{\circ} 21' 18''$  West 287.39 feet to an iron pin found; thence South  $88^{\circ} 57' 26''$  East 60.49 feet to an iron pin found in the centerline of a 25 foot wide City of Durham sanitary sewer easement; thence with the centerline of said easement South  $16^{\circ} 55' 58''$  West 18.28 feet to a point; thence continuing with the centerline of said easement South  $20^{\circ} 34' 55''$  East 165.33 feet to an iron pin found at the corner of McCurdy in the line of Gibbs (Real Estate Book 1318 at page 266); thence with the northern line of Gibbs North  $82^{\circ} 39' 14''$  West 120.65 feet to an iron pin found; thence continuing with the north line of Gibbs and also the northern line of Carden (now Greenberg), crossing the northern terminus of Hillock Place (a 60 foot wide public right-of-way), South  $88^{\circ} 34' 29''$  West 526.57 feet to an iron pin set at the corner of Carden (now Greenberg) and Gibson (Real Estate Book 1485 at page 961); thence with the northern line of Gibson and also Parrish (Real Estate Book 1263 at page 536) North  $88^{\circ} 46' 41''$  West 335.58 feet to an iron pin found; thence continuing with the lines of Parrish North  $04^{\circ} 44' 34''$  East 100.28 feet to an iron pin set and North  $83^{\circ} 51' 54''$  West 66.09 feet to an iron pin found at the southeastern corner of Revill (Real Estate Book 1696 at page 433) in the northern line of Parrish; thence with the eastern line of Revill North  $16^{\circ} 23' 45''$  East 381.92 feet to an iron pin found, corner of Carden (Real Estate Books 1433 at page 25 and 1531 at page 255) in the line of Revill; thence with the Carden line North  $62^{\circ} 16' 58''$  East 331.81 feet to an iron pin found, common corner of Carden and Dunnagan; thence with the line of Dunnagan South  $72^{\circ} 00' 10''$  East 574.08 feet to an iron pin, the point and place of BEGINNING, containing 11.23 acres, more or less, and being all of that property shown on a survey entitled "Final Plat for Eno Commons Subdivision," dated October 8, 1996, revised February 14, 1997, and drawn by William C. Walker, Registered Land Surveyor.