



EXHIBIT D: DECLARATION OF CONDOMINIUM

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

NORTH CAROLINA

DURHAM COUNTY

THIS DECLARATION OF CONDOMINIUM is made and entered into the ____ day of _____, 201__, by Duke Partners LP, a North Carolina Limited Liability Company, ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes.

1. ESTABLISHMENT.

Declarant is the owner in fee simple of real property in Durham County, North Carolina, more particularly described in Paragraph 2 below; and

Declarant intends to construct a single multi-story building on the Property (as defined herein) containing a maximum of forty three (43) residential condominium units and to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions hereinafter set forth; and

Declarant intends and desires by the filing of this Declaration of Condominium to submit the property described in Paragraph 2 below and improvements to be constructed thereon together with all of the appurtenances thereto to the provisions of Chapter 47C of the North Carolina General Statutes, (NORTH CAROLINA CONDOMINIUM ACT), and hereby declares the same to be known and identified as "City Port, a condominium." Declarant will convey said property subject to certain protective covenants, conditions and restrictions as hereinafter set forth.

2. PROPERTY DESCRIPTION.

All that certain property situated, lying and being in Durham County, North Carolina, and being more particularly described on Exhibit J attached hereto and incorporated herein by reference (the "Property"), together with the improvements thereon. A more specific description can be found in Plat Book ____, Pages _____, Durham County Registry (the "Plat") which is incorporated herein by reference.

3. FORM OF ADMINISTRATION.

The property of the Condominium and its business shall be managed, controlled, directed and administered by the City Port Condominium Owners Association, Inc. (hereinafter the "Association") as provided in the Articles of Incorporation and By-Laws, which Articles of Incorporation and By-Laws are at-

tached hereto as Exhibits E and F and made a part hereof. Each Unit Owner shall be a member of the Association.

All powers granted in this Declaration or the By-Laws of the Association shall be exercisable by the Board of Directors, except as expressly provided in the Declaration, the By-Laws, or Chapter 47C of the North Carolina General Statutes.

Not later than sixty (60) days after the conveyance of twenty-five (25%) of the Units to Owners other than Declarant, at least one (1) member and not less than twenty-five (25%) of the Members of the Board of Directors shall be elected by Owners other than Declarant; and not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three (33%) of the members of the Board of Directors shall be elected by Owners other than Declarant.

4. UNIT DESIGNATION.

Declarant does hereby establish within the Property forty three (43) units which shall be used exclusively for residential purposes. The use of all units shall be further restricted by provisions contained within Paragraph 12. Declarant does hereby designate all units for separate ownership. Each unit is identified by a specific numerical designation with a separate unit address as shown on the Plat. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings, and floors, which are shown on the aforesaid plans filed in the Durham County Registry. Mechanical equipment, stairways, and appurtenances (if any) located within any unit and designed to serve only that unit shall be a part of the unit.

Each Unit Owner has an unrestricted right of ingress and egress to their unit, unless same is limited as a result of special uses noted in paragraph 12 herein. This right shall be perpetual and it shall pass with the unit estate as transfers of unit ownership might occur. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the unit to which that interest is allocated is also transferred.

A condominium parking facility will be built beneath, next to, and behind the condominium building. The parking spaces located within the condominium parking facility shall remain the exclusive possession of the Declarant until assigned to a Unit Owner as part of the unit sales process and as further provided herein.

5. PARTY WALLS.

The walls, flooring and ceilings connecting adjacent units are "party walls" and are situated on or about the boundary line separating units. In the case of any walls, flooring, and ceilings that are herein described as party walls, all furring, wallboard, paneling, tile, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit and all other portions of such walls, floors or ceilings are a part of the common elements, pursuant to NCGS 47C-2-102(1).

Each wall which is built as a part of the original construction of a unit and placed on the dividing line between the units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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. Notwithstanding any other provisions of this Declaration, a Unit Owner who by their negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6. COMMON AREAS AND FACILITIES.

The common areas and facilities consist of all parts of the multi-unit building situated on the Property other than individual units therein. The Association shall have the responsibility for maintaining the common areas and facilities. The common areas and facilities shall include without limitation the following:

- a. The land on which the building is erected and all land described in Paragraph 2 above.
- b. All foundations, columns, girders, beams, supports and other structural members.
- c. The roof and all exterior walls and interior walls except those partition walls and all ceilings, floors, and stairways wholly within a unit.
- d. All central appurtenant installments for operations and for services such as power, lights, telephone, security system, cable TV, elevator, cold water for common building usage, heat and air conditioning for common building usage, including pipes, ducts, wiring, cables and conduits, whether located in common areas or in units and all other central mechanical equipment spaces.
- e. All water lines, storm drainage pipes and structures, sanitary sewer pipes and sanitary sewer system.
- f. All of the parts of the property and all apparatus installations existing in the building or upon the property for common use necessary or convenient to the existence, maintenance, or safety of the property.
- g. All landscaping and all other site improvements including, but not limited to, trash collection areas and equipment related thereto; all designated recreation areas (if any); all driveways, alleys and sidewalks; all unassigned parking spaces on the Property; and all equipment rooms, lobbies and utility closets (if any).
- h. (The common lobby and roof deck are available to all unit owners and their guests.

7. LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas and Facilities shall mean and include those portions of the common elements allocated by operation of NCGS 47C-2-102(2) and (4) and those common areas and facilities reserved for use by a certain Unit or Units to the exclusion of other Units, including any deck, open porch, patio, stoop and steps which directly connect the unit to the public sidewalk, balcony, and any assigned parking spaces on the Property.

There will be parking spaces allocated to some of the Units as limited common elements for the exclusive use of the particular Unit. The specific allocations for parking spaces are set forth on Exhibit K and the parking spaces are labeled on the Plat. The parking spaces are located both beneath the condominium building and in a surface parking area adjacent to the condominium building. Unit Owners may reallocate parking spaces among themselves in accordance with NCGS 47C-2-108.

The cleanliness and orderliness of the Limited Common Areas and Facilities shall be the responsibility of the individual Unit Owner, except that the parking areas will have regular housekeeping and landscaping maintenance provided by the Association. The responsibility for maintenance, painting, repair and replacement thereof, shall be and remain with the Association. Some Unit Owners have more or

less Limited Common Areas than others. There are no Limited Common Areas and Facilities except as provided in this Paragraph 7.

8. PERCENTAGE OF OWNERSHIP IN COMMON AREAS.

Each unit shall have a fee simple undivided ownership interest in the common areas as more specifically set forth in Exhibit L attached herewith. Except as provided in Paragraphs 22 and 24 of this Declaration, the percentage of common area per unit shall not be changed without the unanimous consent of the owners herein.

Every owner of a Unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

Each Unit together with its undivided interests in the common areas and facilities, shall, for all purposes be and is hereby declared to be, and to constitute a separate parcel of real property and the Unit Owner thereof shall be entitled to the exclusive ownership and possession of his unit subject only to the covenants, restrictions, and easements herein and by the By-Laws, rules, regulations and resolutions adopted pursuant thereto.

9. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.

The Declarant, for each unit owned within the Property, hereby covenants, and each owner of any unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments or common charges to be established and collected as hereinafter provided. The Declarant shall pay the common expenses for the Condominium until such time the Association makes a common expense assessment.

The Board of Directors shall take prompt action to collect any periodic and special assessments, or portions thereof, due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default by any Unit Owner in paying any assessments as determined by the Board, such Unit Owner shall be obligated to pay a late charge of the greater of \$20.00 or 10% of the payment. The Board shall have the right and duty to attempt to recover such assessments and late charges in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by NCGS 47C-3-116, provided that the Association acts in accordance with NCGS 47C-3-116.

The annual and special assessments, together with the interest, and costs and reasonable attorney's fees incurred in the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs and reasonable attorney's fees incurred in the collection thereof, shall also be the personal obligation of the person (or persons) who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to their successors in title unless expressly assumed by them.

The assessments levied by the Association shall be used exclusively to promote and protect the recreation, health, safety, and welfare of the owners, for the improvement and maintenance of the common areas and facilities, the building and improvements situated upon the Property, and to pay ad valorem taxes and public improvement assessments levied against the common areas. The assessments shall not cover any charges due to be paid to associations to which the Association is subordinate.

The assessments levied by the Association upon Unit Owners shall include charges for the maintenance of common areas and facilities serving the Units.

Any lien for delinquent common expense assessments or other charges that the Association has on a unit will be subordinate to a first mortgage on the unit, if the mortgage was recorded before the delinquent assessment was due.

Any such lien for a common expense assessment will not be affected by the sale or transfer of the unit estate, unless a foreclosure of a first mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments.

10. WORKING CAPITAL FUND.

In addition to the periodic payments for assessments as described above, at the time of the initial closing of the sale of each Unit by Declarant the buyer shall pay a working capital assessment for the purpose of establishing an operating reserve for the Association. The amount of this working capital assessment shall be an amount equal to 3 months' common expense assessment, estimated for the purpose of establishing a working capital fund for the Association. In addition, at any purchase and sale closing of a Unit, the dues will be prorated for the current month and paid, and the dues for the month immediately following will be paid.

11. AMOUNT OF LIEN.

The lien for each unit as described in Paragraph 9 above shall be based on the percentage share in common areas as described in Paragraph 8 above. Said lien shall be perfected upon filing in the Office of the Clerk of Superior Court, Durham County, North Carolina.

The Grantee of a unit shall be jointly and severally liable with the Grantor for all unpaid assessments against the latter for their proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the manager or Board of Directors, as the case may be, setting forth the amount of the unpaid assessments against the Grantor and such Grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessment in excess of the amount therein set forth.

12. USE OF BUILDING.

The use of the property of the condominium shall be in accordance with the following provisions:

The use of the building and units are further restricted by the By-Laws of the Association. No unit may be subdivided into smaller units or any portions thereof, sold or otherwise transferred, without first amending this Declaration and the By-Laws to show the changes in the units to be effected thereby.

The building and each of the units (43 total) shall be used for residential purposes only.

Occupancy of each unit shall comply with all applicable municipal ordinances, including but not limited to restrictions on the number of persons over the age of eighteen unrelated by blood or marriage who shall reside in any single unit, and for how long.

The common areas and facilities shall be used only for the purposes for which they are intended and the furnishing of services for the enjoyment of the units.

No noxious or offensive activity shall be conducted upon any unit nor shall anything be done thereon which may be or may become an annoyance or nuisance or shall interfere with the peaceful possession or quiet enjoyment of property by Unit Owners.

No animals, livestock or poultry of any kind shall be kept or maintained on any unit or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. All household pets shall be kept on a leash at all times when outside the units. There shall be no more than two household pets per Unit.

No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any unit unless and until permission for the same has been granted by the Association.

No signs shall be permitted on or about the units.

All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall be installed and maintained in accordance with any rules and regulations created by the Association to regulate same.

Unit Owners shall not park or store any boat, camper, trailer, trailer vehicle, or similar vehicle anywhere on the premises. No trucks shall be permitted except for standard 2-ton pickup trucks or smaller sized trucks. The maximum height of any vehicle under the building is seven (7) feet, zero (0) inches.

Any lease or rental agreements involving the units shall be in writing and shall be subject to the requirements of the Association documents and Association rules and regulations governing same. No lease shall be for a term of less than 6 months.

13. PERSON TO RECEIVE SERVICE OF PROCESS.

G. Roland Gammon, III is hereby designated to receive service of process in any action which may be brought against or in relation to this condominium. The address of such person is: 3008 Anderson Dr, Suite 120, Raleigh, NC, 27609. The person so designated to receive service of process may be changed by the Board of Directors.

14. EASEMENTS.

The Declarant expressly reserves such easements through the Common Elements as described in NCGS 47C-2-116. Each Unit Owner shall have an easement in common with all other owners over all other units to use all pipes, wires, ducts, cables, conduits, public utilities and other common facilities located in any of the other units and serving each unit. Except as provided in Paragraph 12, the Declarant hereby conveys to each Unit Owner an easement and right of access to any and all common areas, open spaces, yards and parking areas for the common use of all owners. The Association shall have the right to establish the rules and regulations pursuant to which the owner of any unit, and family, guests and invitees may be entitled to use the common areas.

Each unit shall be subject to an easement in favor of the other owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving other units located in such unit. The Board of Directors shall have the right of access to each unit to inspect the same, to remove violations therefrom and maintain, repair, or replace facilities contained therein or which serve other units in the building. Each Unit Owner shall specifically have an easement to maintain all components of the heating and air conditioning system serving their unit in their present location as shown in the plan attached hereto.

The Board of Directors may hereafter agree that easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, telephone wires and electrical conduits, wires over, under and along any portion of the common areas in each unit hereby grants the Board of Directors irrevocable power of attorney to execute, acknowledge, and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing. An easement is hereby established over all common areas for the benefit of applicable governmental agencies for the setting, removing, and reading of water meters, maintaining and replacing water, drainage and drainage facilities, firefighting, law enforcement, garbage collection and the delivering of mail.

All water lines which serve the development not located in public street rights-of-way and all sewer lines which serve the development and not located in either public street right-of-way shall be owned and maintained by the Association.

In addition to the foregoing easements, the Property is encumbered by the following easements and other covenants: (i) Shared Driveway, Access and Dumpster Pad Easement recorded in Book _____, Page _____, Durham County Registry, (ii) Sanitary Sewer Easement shown on that certain Plat recorded in Plat Book 120, Page 186, Durham County Registry, and (iii) Covenants, conditions, and restrictions set forth in deed recorded in Deed Book 1528, Page 234, Durham County Registry.

[Easement recording information will be filled in prior to recording based on the actual, signed agreement and recorded instruments.]

15. DISCLAIMER BY CITY OF DURHAM

Pursuant to its Municipal Code, the City of Durham refuses to be responsible for failing to provide any emergency or regular public service to such developments or their occupants when such failure is due to the lack of access to certain roads or streets that are not public due to inadequate design or construction, blocking of access routes or any other factor within the control of the Declarant, Association, or occupants. The Durham Fire Department has similar policies and thereby refuses to be responsible for failing to provide any emergency or regular service to such developments or their occupants when such failure is due to the lack of access to certain roads or streets that are not public due to inadequate design or construction, blocking of access routes or any other factor within the control of the Declarant, Association, or occupants.

Accordingly, the Board of Directors is hereby empowered to make all efforts to assure that there is adequate access to all units and shall not allow any blocking of access or defects in access to remain uncorrected.

16. PARTITIONING.

The common areas and facilities shall not be divided nor shall any right to a partition thereof exist. Nothing herein contained ever shall be deemed to prevent ownership of a condominium unit by the entireties, jointly or in common or in other form permitted by law.

17. DAMAGE, DESTRUCTION AND CONDEMNATION.

Except as herein provided, damage to or destruction of the building shall be promptly repaired and restored by the Board of Directors. The Unit Owners shall be liable for assessment of any deficiency, provided however, that if the building be more than two-thirds destroyed by fire or any other casualty, or the same taken by condemnation, and the Unit Owners who represent at least 67% of the total allocated votes in the Association and 51% of the votes of units estates that are subject to mortgages held by eligible holders resolve not to proceed with reconstruction or restoration, then in that event, the property shall be deemed to be owned as tenants in common by the Unit Owners and subject to the provisions of North Carolina General Statutes Section 47C-2-118 as the same exists as the date hereof.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal within thirty (30) days after it receives proper notice of the proposal, provide the notice was delivered by certified mail or registered mail with a "return receipt" requested.

In any related proceedings, negotiations, settlements or agreements, the Association shall be designated to represent the Unit Owners. In such event, each Unit Owner shall appoint the Association as an attorney-in-fact for this purpose. The Association shall appoint an Insurance Trustee to act on behalf of the Unit Owners in connection with the settlement of any condemnation awards or insurance claims and to administer the allocation of proceeds among the various interested parties.

Any losses, awards or proceeds from the condemnation, destruction or liquidation of all or a part of the property shall be payable to the Association's Insurance Trustee for the benefit of the Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of the project shall be made based on the relative value of each unit and in accordance with the formula that is used to determine the Unit Owner's individual interest in the common elements.

Any reconstruction or repair shall be in accordance with the plans and specifications of the original building, portions of which are attached hereto.

18. INSURANCE.

The insurance which shall be carried upon the property shall be governed by the following provisions:

- a. Casualty or physical damage insurance shall be carried in an amount equal to the full replacement value (i.e., 100% of full "replacement cost") of all buildings and all improvements on the Property owned either by the Association or the Unit Owners and all personal property included within the Property, except such personal property as may be owned by the Unit Owners, with a replacement cost endorsement and an inflation guard endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Directors with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

- i. loss or damage by fire or other hazards covered by the standard coverage endorsement together with coverage for common expenses with respect to condominium units during any period of repair or reconstruction; and
 - ii. such other risks as from time to time customarily shall be covered with respect to buildings similar to the building in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts not in excess of Two Thousand Five Hundred Dollars (\$2,500.00) as the Board of Directors shall determine. All Casualty Insurance policies shall be purchased by the Association for the benefit of the Association, the Unit Owners and their respective mortgagees, as their interests may appear and shall provide (i) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units, if any, and (ii) that the insurer waives its rights of subrogation against the Unit Owners, Occupants and the Unit Owners Association. All casualty insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Board of Directors as trustees, for each of the Unit Owners in the percentages established in this Declaration for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners, and their respective mortgagees as their interests may appear.
- b. Association shall insure itself, the members of the Board, the Unit Owners, and the Occupants against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Condominium Project or any portion thereof, including, without limitation, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverage, such insurance to afford protection in such amount and with such coverage as shall be deemed necessary by the Association. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner. In the event the insurance effected by the Association on behalf of the Unit Owners and Occupants against liability for personal injury or property damage arising from or relating to this Condominium Project shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common expense to the Unit Owners, and any Unit Owners who shall have paid all or any portion of such deficiency in an amount exceeding his proportionate share thereof based on his percentage of interest in the common areas shall have a right of contribution from the other Unit Owners according to their respective percentage of interest in the common areas.
 - c. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common expenses.
 - d. All insurance policies shall be written with a company or Companies licensed to do business in the State of North Carolina and holding a rating of "A+" or better in Best's Insurance Guide.
 - e. Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative.
 - f. In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by the Owners of the condominium units or their mortgagees, as herein permitted, and any "no other insurance" or similar clause in any policy obtained by the Unit Owners Association pursuant to the requirements hereof shall exclude such policies from consideration.
 - g. All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any an all insureds named thereon, including any and all mortgagees of the condominium units.

- h. All policies of casualty insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Board of Directors (or any Insurance Trustee) or when in conflict with the provisions of this Declaration or the provisions of the North Carolina Unit Condominium Act as the same may be in force from time to time.
- i. All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors thereof, the Owners of any condominium unit and/or their respective agents, employees or invitees, and any defenses based upon co-insurance or invalidity arising from the acts of the insureds.

19. UNIT OWNERS POLICIES OF INSURANCE.

The Owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "Condominium Unit Owner's Endorsement" for improvements and betterments to the condominium unit made or acquired at the expense of the owner) at their own expense. Such insurance shall be written by the same carrier as that purchased by the Board of Directors pursuant to the provisions hereof or shall provide that it shall be without contribution as against the same. The Declarant recommends that each owner of a Condominium Unit in the project obtain, in addition to the insurance hereinabove provided to be obtained by the Unit Owners Association, a "Tenant's Owners Policy", or equivalent, to insure against loss or damage to personal property used in or incidental to the occupancy of the Condominium Unit, additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "Condominium Unit Owner's Endorsement" covering losses to improvements and betterments to the condominium unit made or acquired at the expenses of the Unit Owner.

20. UNITS SUBJECT TO DECLARATION.

All present and future owners, tenants, occupants of units and employees of owners and tenants shall be subject to, benefited by and shall comply with the provisions of this Declaration, by the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws. In accordance herewith, the Declaration, By-Laws and rules and regulations may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, By-Laws, and any rules and regulations which may be adopted are accepted and ratified by such owner, tenant, or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though provisions were made a part of each and every deed, conveyance or lease. When there are unsold units in the project, the Declarant also shall enjoy the same rights and assume the same duties under this Declaration as they relate to each unsold unit but for the payment of assessments on unsold and unoccupied units (see Paragraph 9).

21. CONSTRUCTION.

In interpreting any and all provisions of this instrument, the Exhibits attached hereto and subsequent deeds and deeds of trust covering individual units, the actual location of the unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally or vertically, from the locations indicated in Plat Book _____, Pages _____, Durham County Registry or in minor variations in the description of the unit con-

tained herein. To the extent that such minor deviations in location do or shall exist, a valid easement therefor and for the maintenance thereof does and shall exist.

[Plat recording information will be filled in when the final plat is recorded with this Declaration.]

22. AMENDMENT.

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except in cases of amendments by the Declarant, the Association, or certain Unit Owners pursuant to the exceptions provided in NCGS 47C-2-117(a), this Declaration may be amended by an instrument signed by not less than eighty percent (80%) of the Unit Owners. Notwithstanding the foregoing, no amendment may create or increase special declarant rights, increase the number of Units, or change the boundaries of any Unit, the allocated interest of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. Any amendment must be recorded.

Amendments of a material nature shall be agreed to by Unit Owners who represent at least 80% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 51% of the votes of unit estates that are subject to mortgages held by eligible holders. Eligible mortgage holders shall be those holders of a first mortgage on a unit estate who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders. Unit Owner votes may be cast in person or by proxy at a meeting held in accordance with the provisions of the By-Laws. For a period no longer than five (5) years after the initial filing of this Declaration in the Durham County Registry, the Declarant may unilaterally amend this Declaration without the consent or approval of other Unit Owners or eligible mortgage holders provided such amendment shall be exclusively for the purpose of (a.) correcting clerical error, (b.) making changes required by the Federal National Mortgage Association or other such agencies, and (c.) making changes other than material changes (as defined below) to this Declaration. Otherwise, this Declaration may be amended by an instrument signed by not less than eighty percent (80%) of the Unit Owners. No such amendment shall be effective until set forth in an amended declaration and duly recorded in the Office of the Register of Deeds in Durham County, North Carolina. Upon recording, notice of the amended declaration shall be provided to all Unit Owners and all the Unit Owners and their successors and assigns, shall be bound by said amendments.

A material change shall be considered as one which changes any of the following:

- voting rights;
- increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- reductions in reserves for maintenance, repair, and replacement of common elements;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or limited common elements, or vice versa, or rights to their use;
- redefinition of any unit boundaries;
- convertibility of units into common elements or vice versa;
- expansion or contraction of the project, or the addition, annexations, or withdrawal of property to or from the project;
- hazard or fidelity insurance requirements;

- imposition of any restrictions on the leasing of units;
- imposition of any additional restrictions on the use of units;
- imposition of any restrictions on a Unit Owner's right to sell or transfer their unit;
- a decision by the Association to establish self-management if professional management had been required previously by Association documents or by an eligible mortgage holder;
- restoration or repair of the project (after damage or partial destruction) in a manner other than that specified in the documents; or
- any provisions that expressly benefit mortgage holders, insurers or guarantors.

Implied approval by an eligible mortgage holder shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal provided the notice was delivered by certified mail or registered mail with a "return receipt" requested.

This Declaration may further be unilaterally amended by the Declarant for the purpose of recording a verified statement of a registered architect or licensed professional engineer certifying that the plans heretofore filed or being filed simultaneously with such amendment fully depicting the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built.

23. RIGHTS OF CONDOMINIUM MORTGAGE HOLDERS, INSURERS OR GUARANTORS

Upon receipt of written request by a holder, insurer or guarantor of a mortgage on any unit in the project, the Association shall furnish timely written notice regarding the following:

- any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage;
- any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of any unit on which it holds the mortgage;
- a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

Any interested mortgage holder, insurer, or guarantor shall send a written request to the Association stating both its name and address and the unit number or address of the unit on which it has (or insurers or guarantees) the mortgage.

24. ARBITRATION.

The Association, the Board of Directors and each Unit Owner, by accepting a deed to a unit, agrees that any party may require that any unresolved matter between the parties be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C. Gen. Statute 1-567.1 et seq. as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be common expense unless all Unit Owners so agree in writing or unless such award is to be paid by the Association.

25. SEVERABILITY.

The invalidity of any provisions of the Declaration shall not be deemed to impair or affect in any manner the validity and enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provisions had never been included herein.

26. WAIVER.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

27. GOVERNING LAW.

This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

28. DEFINITION.

Any terms used herein which are defined in the North Carolina Condominium Act shall have the meaning specified in the Act unless a contrary intention fairly appears.

29. RESERVATION OF DECLARANT RIGHTS.

Declarant reserves the following Special Declarant Rights for Units owned by the Declarant:

- a. To combine or reconfigure the interior dimensions of Units within the condominium such that the resultant number of units might be less than forty three (43) provided that in so doing, no changes shall extend beyond the exterior of the building.
- b. To file amended or supplemental instruments to make this Declaration of Condominium applicable to such changes or reconfiguration of Units.
- c. To change the percentage of interest in the common areas and facilities allocated to each unit based upon the results of its combining or reconfiguring Units as provided herein.

These Special Declarant Rights shall expire ten years after Declarant's conveyance in fee of the last Unit owned by Declarant.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal this the day and year first above written.

Duke Partners LP

A North Carolina Limited Partnership

By: _____

G. Roland Gammon, III, Manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: G. Roland Gammon, III, Manager of Duke Partners LP.

Date: _____

Signature of Notary Public: _____

Printed/Typed Name of Notary: _____

My Commission Expires: _____