

WHEREAS, Declarant desires to submit said real property and the improvements located thereon (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act and by so doing intends to protect the value and the desirability of the Property, further a plan for condominium ownership of the Property, create a harmonious and attractive mixed use development, and promote and safeguard the health, comfort, safety, convenience and welfare of the owners of the condominium units.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

The capitalized terms used in this Declaration and in the Exhibits hereto shall have the meanings stated in the North Carolina Condominium Act and as follows, unless the context otherwise requires:

1.1 Act or North Carolina Condominium Act means the North Carolina Condominium Act as currently set forth in N.C.G.S., Chapter 47C, Articles 1 through 4, as amended.

1.2 Articles or Articles of Incorporation means the articles of incorporation filed with the office of the North Carolina Secretary of State which establishes Durham Kress Condominium Association as a North Carolina not-for-profit corporation.

1.3 Assessment means a Unit Owner's pro rata share of the common expenses which from time to time are assessed against a Unit Owner by the Association.

1.4 Association means the Unit Owners' association as defined by the Act, and also means the Durham Kress Condominium Association, the not-for-profit corporation by which the Unit Owners' association shall operate the Condominium.

1.5 Board or Executive Board means the group of persons selected, authorized and directed to operate the Association as provided by the Act, this Declaration and the Bylaws.

1.6 Bylaws means the bylaws of the Association which, with this Declaration and the Articles of Incorporation of the Association, describe the powers and functions of the Association, and which from time to time may be amended by the Association. Rules of conduct of the Association shall be attached to the Bylaws as an appendix.

1.7 Building means a structure containing one or more Units which comprises a part of the Property.

1.8 Common Elements means all portions of the Condominium other than the Units.

1.9 Common Expenses means the expenses for which the Unit Owners are liable to the Association consisting of expenditures made by, or financial liabilities of, the Association including, but not limited to, expenses of administration, maintenance, insurance, operations, repair or replacement of the Common Elements, allocations to general operating reserves and any authorized additions thereto, any amount for general working capital and general operating reserves, amounts for a reserve fund for replacements, and to make up any deficit in assessments for Common Expenses for any prior year and any expense or liability covered by the levy of a special assessment.

1.10 Co-owner means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, which owns a Unit. The term "Owner" or "Co-owner" shall have the same connotation as the term "Unit Owner" as used in the Act.

1.11 Commercial Tenant means a lessee or sublessee of a Commercial Unit or any portion of a Commercial Unit.

1.12 Commercial Unit means any Unit that is used for commercial purposes that is not a Residential Unit.

1.13 Condominium means the real estate described in Exhibit A, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions.

1.14 Declarant means Durham Kress, LLC, a North Carolina limited liability company, with its principal place of business located in Durham, North Carolina, and its successors and assigns.

1.15 Declaration means this Amended and Restated Declaration of Durham Kress Condominium, as it may be amended from time to time, which shall be recorded in the Durham County Registry together with the Plat, thereby establishing Durham Kress Condominium by subjecting the Property to the Act.

1.16 Future Phase Property means that certain real property described on Exhibit B attached hereto and incorporated herein by reference which Declarant may add to the Condominium according to the terms of this Declaration.

1.17 Limited Common Elements means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of N.C.G.S. § 47C-2-102(2) and (4) of the North Carolina Condominium Act.

1.18 Owner or Unit Owner has the same definition as Co-owner as set forth in Paragraph 1.10 of this Article 1.

1.19 Plat means the survey of the Property and the plans for the Condominium, said Plat consisting of nine sheets and being recorded in the Durham County Registry in Condominium Plat Book 9, Pages 159 through 183, inclusive. The Plat is hereby incorporated herein by reference as if the same were attached hereto. The Plat shall supplant in their entirety the plats and plans recorded as part of the Old Declaration in Condominium Plat Book 8, Pages 205, 208 and 211, Durham County Registry.

1.20 Period of Declarant Control means the period during which the Declarant shall control the Association, which period shall commence on the date hereof and continue until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Units (including Units that may be created pursuant to Special Declarant Rights) to Unit Owners other than Declarant; (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or, (iii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

1.21 Property means and includes the underlying land, the Building, all other improvements and structures thereon, as described in Exhibit A attached hereto and incorporated herein by reference, and all easements, rights and appurtenances belonging thereto.

1.22 Residential Unit means any that is intended for, and restricted to, residential use.

1.23 Special Declarant Rights means all of Declarant's reserved rights as defined in the Act and in this Declaration.

1.24 Unit or Condominium Unit means the physical portion of the Condominium which is designated for separate ownership, the boundaries of which are described in section 3.2 hereof and which are shown on the Plat.

Notwithstanding the foregoing definitions, all definitions set forth in N.C.G.S. § 47C-1-103 are hereby incorporated by reference and the terms defined therein shall have the meanings set forth therein when used in this Declaration or in other Condominium documents, unless the applicable terms are expressly defined otherwise in this Declaration or unless the context otherwise plainly requires a different meaning.

ARTICLE II

SUBMISSION OF PROPERTY TO CONDOMINIUM ACT

2.1 Submission of Property; Amendment and Restatement. Declarant hereby submits the Property to the provisions of the Act, thereby replacing and amending the Old Declaration in its entirety. The Property will be administered in accordance with the provisions of the Act, the Declaration, the Bylaws, and the other Condominium documents as applicable. The recordation of this Declaration shall render the Old Declaration null and void and of no further force or effect as it shall be replaced in its entirety by this Declaration.

2.2 Condominium Name. The name of the Condominium shall be "Durham Kress Condominium".

2.3 Plat and Plans. The Property is located in the City of Durham, Durham County, North Carolina. Attached hereto as Exhibit A is a legal description of the Property, which Property is more particularly shown on the Plat. The improvements on the Property have been constructed in accordance with certain architectural plans which are filed as part of the Plat. Included on the Plat is a certificate by the architectural firm that drafted the plans that the Units constructed on the Property were constructed substantially in compliance with said plans and comply with the statutory requirements of the Act.

2.4 Number of Units. There are hereby created by the recording of this Declaration eighteen (18) Residential Units and three (3) Commercial Units, each Unit being hereby designated for separate ownership. Declarant hereby reserves the right to create up to fifty five (55) additional units on the Future Phase Property. After the recording of this Declaration, and according to its terms, Declarant may add Units to the Condominium by creating new Units so long as Declarant does not exceed the maximum number of seventy six (76) Units. Units created by the subdivision of existing Units shall not count toward the maximum number of Units. In the event that the total number of Units is changed from the initial number of Units declared by the recording of this Declaration, this Declaration will be amended to reallocate the Fractional Shares shown on Exhibit D attached hereto and incorporated herein by reference. Unit boundaries are described in section 3.2 below and on the Plat. Identifying Unit numbers are also shown on the Plat.

The Plat shows certain Residential Units as combined by labeling Unit numbers together, e.g. Unit 301/401, because these Residential Units are connected by an internal staircase and are being sold by the Declarant as one living space even though these Residential Units are separate and distinct parcels of saleable real estate. The exception to this general rule is the Residential Unit labeled on the Plat as Unit 405/Penthouse which is only one Unit instead of two Units connected by an internal staircase.

2.5 Association Membership. Each Owner shall be a member of the Association. An Owner shall be entitled to a vote in the Association for each Unit owned in accordance with the Fractional Shares.

2.6 Limited Common Elements Generally. Other than those portions of Common Elements allocated by operation of N.C.G.S. § 47C-2-102(2) or (4), in the Act, and those created and allocated by operation of section 4.2 below, there are no additional Limited Common Elements.

2.7 Special Declarant Rights. Declarant reserves the following Special Declarant Rights as to the entirety of the Property and the Future Phase Property:

- (a) To complete any and all improvements indicated on the Plat;

(b) To construct and maintain any sales office, management office, or model or guest rooms in any of the Units or on any of the Common Elements shown on the Plat;

(c) To add the Future Phase Property to the Condominium, or any portion thereof; to engage in any of the activities described in section 3.6 and Article XIII hereof; to add additional Units, Common Elements and Limited Common Elements to the Condominium subject to the maximum number of Units allowable hereunder; to alter the size of any Unit by relocating Unit boundaries; to subdivide Units; to reallocated certain Limited Common Elements as more particularly described herein; and, to convert Units or portions thereof into Common Elements;

(d) During the Period of Declarant Control, to appoint and remove any officers or Executive Board members; provided, however, that: (i) not later than sixty (60) days after the conveyance of 25% of the Units (including Units which may be created pursuant to Declarant's Special Declarant Rights) to Owners other than Declarant, at least one (1) member and not less than 25% of the Members of the Executive Board shall be elected by Owners other than Declarant; and (ii) not later than sixty (60) days after conveyance of 50% of the Units (including Units which may be created pursuant to Declarant's Special Declarant Rights) to Owners other than Declarant, not less than 33% of the members of the Executive Board shall be elected by Owners other the Declarant;

(e) To use those easements through any Common Elements which are reasonably necessary for the purpose of making any improvement to the Condominium or on Future Phase Property, or otherwise necessary for the exercise of these Special Declarant Rights or otherwise discharging its obligations or rights hereunder;

(f) To place "For Sale" or "For Rent" signs advertising Units on any part of the Common Elements or within any Units owned by the Declarant; and

(g) To assign, collaterally or otherwise, in whole or in part, to its successors in title, any of Declarant's Units hereunder, or to its agent, or to an independent third party, or to the Association, any of the rights reserved in this Declaration, including these Special Declarant Rights. All references to Declarant and Declarant's rights hereunder shall be deemed to include any specific assignee of Declarant.

These Special Declarant Rights shall expire at the earlier of: 1) that date which is fifty (50) years from the date of recording of this Declaration; or 2) at such time as Declarant may determine by recording an instrument to that effect. Notwithstanding the expiration of the Special Declarant Rights, the Declarant may retain ownership of any number of the Units for any amount of time. Certain of the aforementioned Special Declarant Rights are further described in more detail in other Articles of this Declaration. The Special Declarant Rights may be exercised by Declarant at Declarant's sole discretion without the consent of the Association or any Unit Owner.

ARTICLE III
DESCRIPTION OF UNITS; USE; REPAIRS; RESTRICTIONS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

3.1 General Description of Units. At the time of the recording of this Declaration, the Building contains three (3) Commercial Units, one in the basements, one on the first floor and one mezzanine level of the Building and eighteen (18) Residential Units located on the second, third, and fourth floors of the Building. References herein to the fourth floor of the Building include the old mechanical room above the fourth floor which is labeled as the Penthouse on the Plat. The quantity of Units as provided in this section 3.1 is subject to the Special Declarant Rights reserved above in section 2.7. It is the intent of the Declarant to offer some of the initially declared Residential Units as unfinished "shell" space for sale for further upfit and customization by initial purchasers subject to the provisions of this Declaration. Accordingly, each Unit may be sold by Declarant in its unfinished state and without a certificate of occupancy issued. No representation is made as to the numbers of Residential and Commercial Units that may be created by Declarant through the exercise of its Special Declarant Rights so long as the total number of Units does not exceed seventy six (76). Units created by the subdivision of existing Units shall not count against this maximum number of Units. The Units initially created by the recording of this Declaration are more particularly shown on the Plat, which is incorporated herein in the same manner as if expressly set forth in this section 3.1. The Plat provides the Unit numbers and square footage of area in each Unit, and depicts the Unit boundaries that are further described in section 3.2 below, which together shall constitute a complete description of the Units within the Condominium. Reference is hereby made to section 4.2 below for a description of the Limited Common Elements appurtenant to certain Units.

3.2 Unit Boundaries. The vertical and horizontal perimetric boundaries of each Unit shall consist of the unfinished perimeter walls, subfloors and the bottom surfaces of the ceiling joists, all as more particularly shown and described on the Plat. More specifically, the horizontal plane of the bottom surface of the joist bays in the ceilings within a Unit shall be the upper boundary thereof and the horizontal plane of the top surface of the subfloor of each Unit shall be the lower boundary thereof. All lath, furrowing, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof which may exist in the Unit of which may be added by a purchaser of the Unit shall be a part of the Unit. All other portions of such walls, floors, ceilings, or mechanical chases adjacent to the Unit boundaries not included within the Units are a part of the Common Elements. Interior walls, partitions, fixtures, appliances, cabinets and other facilities and other improvements lying completely within the boundaries of a Unit, if any, shall be part of such Unit.

3.3 Unit Owners' Responsibilities for Maintenance and Repair.

(a) Each Owner shall be responsible for the maintenance and repair of his Unit. Each Unit Owner shall also be responsible for the routine cleaning of the interior surfaces

of the windows and entry doors of his Unit (even though these windows and doors are made Limited Common Elements by below Section 4.2).

Residential Units 301-401, 302-402, 303-403, and 404 are fitted with large windows in the exterior walls which are immediately adjacent to the private outdoor patios serving those Units. These windows are *Limited Common Elements*. Contrary to the general rule herein that the Association is responsible for the maintenance, replacement and repair of Limited Common Elements, the Owners of Units 301-401, 302-402, 303-403, and 404 shall be responsible (including cost) for the maintenance, replacement and repair of these large windows serving their Units. The Association may develop reasonable rules and regulations governing the repair and replacement of these windows for the purpose of ensuring that the Common Elements, other Units, and the interests of the other Unit Owners are protected during such repair or replacement.

(b) Each Owner shall be responsible for any damage to his Unit or to any other Unit or any of the Common Elements caused by any action or inaction of that Owner, his lessee, invitee, or agent (i.e., actions other than what is customarily considered normal wear and tear), damage attributable to keeping pets, smoking, and similar kinds of activity, which directly or indirectly causes damage to any other Unit or to any of the Common Elements.

(c) In the event that the Association determines that any Unit Owner has failed or refused to discharge properly his obligations with respect to the maintenance, cleaning, repair, or replacement of items for which he is responsible under the Declaration, then, in that event, the Association, except in the event of an emergency situation, shall give such Unit Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement at such Unit Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repair, or replacement deemed necessary. Except in the event of emergency situations, such Unit Owner shall have fifteen (15) days in which to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner, or in the event such maintenance, cleaning repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement in a good and workmanlike manner within fifteen (15) days and diligently pursue completion. In the event of emergency situations or the failure of any Unit Owner to comply with the provisions hereof after such notice, the Association may provide any such maintenance, cleaning, repair, or replacement at such Unit Owner's sole cost and expense, and said cost shall be added to and become a part of the assessment to which such Unit Owner and his Unit are subject and shall become a lien against such Unit as provided herein.

3.4 Uses of Units; Use Restrictions. It is the intent of the Declarant that the Property be developed and maintained as a first class mixed-use development. To that end, the following covenants, conditions and restrictions are hereby placed on the Property.

(a) Restrictions Applicable to All Units.

(i) The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinance, regulations and requirements, now or hereafter enacted or promulgated by the United States of America, State of North Carolina, the County of Durham, or the City of Durham, and any other entity or agency now or hereafter having jurisdiction over the Property or any portion thereof (including all noise ordinances); and make all payments of taxes and other charges, the nonpayment of which entitles the unpaid party to assert a lien on an Owner's property, or if noncompliance or nonpayment by one Owner with respect to his Unit or any part thereof would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to such other Owner or for the Building itself or would jeopardize such other Owner's right to occupy or use beneficially his respective Unit or any part thereof, or would result in the imposition of a lien against any other property of an Owner.

(ii) Each Owner (hereinafter for the purposes of this section 3.4(a)(ii), "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless any other Owner, its partners, agents, directors, officers, employees and members (collectively referred to for the purposes of this section 3.4(a)(ii) as the "Indemnitee") from and against any and all claims against Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's or its Permittees' use, possession, or management of the Indemnifying Owner's Unit or activities therein or arising out of the Indemnifying Owner's or its Permittees' use, exercise or enjoyment of an easement and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred with respect to any such claim, action or proceeding brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. (Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.)

(iii) No Unit Owner shall do, suffer, or permit to be done, anything in his Unit which would impair the soundness or safety of the Condominium, or which would be noxious or offensive or an interference with the peaceful possession and proper use of other Units, or which would require any alteration of or addition to any of the Common Elements to maintain compliance with any applicable law or regulation, or which would otherwise be in violation of law, or which would cause the insurance rates for the insurance carried by the Association, or by any other Unit Owner on his Unit or personal property kept on the Property, to increase above the commercially reasonable rates available for similar purposes.

(iv) In case of any emergency originating in or threatening any Unit, or any portion of the Common Elements, regardless of whether the Owner, any tenant, or their invitees, if any, are present at the time of such emergency, the Association's Board and all

managerial personnel shall have the right to authorize access to such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Owner of each Unit, if required by the Association, shall deposit a key to such Unit under the control of the Association.

(v) No Owner shall (either with or without negligence) cause or permit the escape, disposal or release of any biologically active or other hazardous substances, or materials or allow the storage or use of such substances or materials anywhere on the Property in any manner not sanctioned by law for the temporary storage and use of such substances or materials. Each Owner shall maintain its Unit so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all state, federal, local and other governmental and regulatory authorities, agencies and bodies applicable to the Property pertaining to environmental matters or regulating, prohibiting or otherwise having to do with asbestos, lead and all other toxic, radioactive, or hazardous wastes or material including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended.

(vi) Except as permitted by applicable law, including regulations of the Federal Communications Commission, no television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed in the exterior portion of any Unit or to the Common Elements without the express written permission of the Association.

(vii) All garbage and items to be recycled shall be placed only in the designated receptacles for pickup by the City of Durham, its agent, or other private contractor. Declarant may effect changes in any Unit or in the Common Elements at any time to meet mandatory requirements of applicable law.

(ix) Any lease of any Unit shall expressly provide that occupancy thereunder must be in a manner consistent with the Bylaws and shall likewise provide that the terms and conditions of the Declaration and all exhibits thereto shall be complied with by the lessee. Any lease entered into by a Unit Owner pursuant to the provisions of this paragraph shall be deemed to contain the requirements set forth herein whether or not they are actually contained therein and the lessor and the lessee of any such lease shall be bound by these provisions.

(x) All Units on the second, third and fourth floors of the Building (including any Units or portions of Units above the fourth floor) shall be Residential Units restricted to residential use.

(b) Restrictions Applicable to Commercial Units. The Commercial Owner and the Commercial Tenants shall neither use any Unit for any of the following uses nor enter into any agreements or leases with any party which uses, or intends to use, any Unit for any of the following uses, and no such use shall be permitted:

(i) Bowling alley;

- (ii) Funeral parlor;
- (iii) Industrial or manufacturing use;
- (iv) Adult bookstore or adult movie store;
- (v) Massage parlor, "strip" or similar club or establishment;
- (vi) So-called "head shop";
- (vii) Dry cleaners (except as a "drop off" site for off-site cleaning);
- (viii) Photography stores which develop film on-site (unless the store is required by the terms of its lease to properly store and dispose of processing chemicals and other, photographic waste materials in accordance with all applicable federal, state and local laws, rules and regulations);
- (ix) Pet store, kennel, veterinary practice, or similar use that involves the housing of animals;
- (x) Day care;
- (xi) Check cashing, payroll lending, or cash advance services;
- (xii) Bail bonding services;
- (xiii) Pawn shop;
- (xiv) Church or other place of worship;
- (xv) Store selling weapons of any kind, including guns; and
- (xvi) Group home.

(c) Restrictions Applicable to Residential Units.

(i) The Residential Units shall be used only for residential, noncommercial purposes; provided, however, subject to the terms of this Declaration, Residential Unit Owners may "work from home" so long as there are no customers or employees visiting or otherwise working in such Residential Unit.

(ii) No signs of any nature, including "for rent" or "for sale" and other similar signs, shall be erected or maintained on any Residential Unit by anyone, including but not limited to the Owner, a realtor, a contractor or subcontractor, except as may be required by legal proceedings, without permission of the Association. Provided, however, that Residential Unit Owners may display a flag of the United States or North Carolina or political signage so long as such flags or signage are within the limits of N.C.G.S. § 47C-3-121.

(iii) A maximum of three (3) domestic pets per Residential Unit is allowed subject to the provisions of this Declaration. No Residential Unit Owner may have more than two (2) of any one type of pet (i.e. dog, house cat). No single pet shall be larger than one hundred (100) pounds. Non-domestic pets shall not be allowed in any Residential Unit. Pets shall not be kept or maintained for commercial purposes or for breeding. Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Association. All pets shall be kept on a leash except when in a Residential Unit and the Residential Unit Owner shall be responsible for removing all feces left on the Property by any pets residing with such Residential Unit Owner.

(iv) Except to the extent such uses are required by law to be permitted, no Residential Unit may be used for day care or group home purposes.

(v) No unusual, disturbing or objectionable odor or noise shall be permitted to emanate from any Residential Unit.

(vi) No Residential Unit Owner shall sweep or throw any debris, dirt or other substance from any window or balcony, patio or terrace or permit any occupant or guest to engage in such activities.

(vii) No Residential Unit Owner shall park or store any boat, camper, trailer, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 1-ton or less pickup trucks or smaller sized trucks.

(viii) No Residential Unit shall be leased or subleased unless expressly approved in writing by the Association; and, no lease or sublease of a Residential Unit shall be for a term of fewer than twelve (12) months.

(d) Restrictions to Run with Land. The Declarant hereby declares and affirms that the covenants, conditions and restrictions described herein shall be deemed restrictive covenants running with the land and are imposed as a limitation and burden upon each Unit Owner and upon the Declarant, upon all future Unit Owners, upon Owner's lessees, invitees, permittees, licensees, guests any other person or entity having any right, title or interest in the Property.

3.5 Assessments for Common Expenses.

(a) Periodic Assessments for Common Expenses. The Association shall have the power to levy, and all Unit Owners shall be obligated to pay, periodic Assessments imposed by the Association to meet all Association Common Expenses. Payment of the periodic Assessments shall be in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate so long as made at least annually. The procedures for budget proposal and ratification are set forth in the Bylaws.

(b) Assessments to Remain in Effect Until New Assessments Made. The omission by the Board before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration and Bylaws or a release of any Unit Owner from the obligation to pay the Assessments, or an installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed. No Unit Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his or her or its Unit.

(c) Special Assessments. All Unit Owners shall be obligated to pay special Assessments imposed by the Association to meet the costs of, among other things, capital improvements, repair or replacement of the Common Elements, allocations to reserves and other extraordinary expenses. Such special Assessments must be approved by the Board but shall not be payable if Unit Owners holding seventy-five percent (75%) of the total vote in the Association vote against such Assessment at a special meeting held within forty-five (45) days of delivery of notice of the special Assessment to Unit Owners. If a vote against the proposed special Assessment is not sustained, the special Assessment shall be due and payable ten (10) days after expiration of the forty-five (45) day period in which the Unit Owners may consider action to veto a special Assessment.

(d) Records. The Board shall keep detailed records of the receipts and expenditures affecting the Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner during reasonable business hours.

(e) Default in Payment of Assessments. The Board 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 which is late, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid assessments. The Board shall have the right and duty to attempt to recover such Assessments, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by N.C.G.S. § 47C-3-116. With regard to the subordinate nature of such liens as it relates to mortgages recorded prior to the recording of any evidence of such lien, the provisions of N.C.G.S. § 47C-3-116(b), as amended, shall be controlling.

(f) Statement of Assessments or Other Charges. The Board shall, for a reasonable fee not to exceed Ten (\$10.00) Dollars, promptly provide any purchaser, Unit Owner, encumbrancer or prospective encumbrancer of an Unit so requesting the same in writing, with a written statement of all unpaid Assessments or other charges due from the Owner of that Unit and the purchaser's liability therefor shall be limited to the amount as set forth in the statement.

3.6 Alterations. This section 3.6 is subject to the Special Declarant Rights reserved in section 2.7 above.

(a) Improvements within Units. Subject to the provisions of above section 2.7 and this section 3.6, an Owner may make improvements or alterations within his Unit that do not in any way change the Common Elements or otherwise impair the structural integrity or mechanical systems or lessen the support of any portion of the Building.

(b) Alterations to Common Elements; Signage. Except as otherwise set forth herein, no Owner or other occupant may make any alteration to the Common Elements or change the appearance of the Common Elements or anything which results in changes visible from outside the Unit, e.g., paint color or awnings or signs in windows. Commercial Owners or Commercial Tenants may place signs on the West Main Street or South Mangum Street ground floor facade so long as the signs advertise the businesses currently situated in the Commercial Unit. Signage (advertising the businesses contained in the Commercial Unit or any other business) may be placed on the rear wall of the Building facing Ramseur Street. All signage must comply with all applicable sign ordinances. Any signage on the rear of the Building facing Ramseur Street is subject to the Special Declarant Rights reserved herein and thereby is subject to removal or alteration at the sole discretion of the Declarant. Prior to its placement on the Building, all signage shall be approved in writing by the Association pursuant to a procedure that the Association may reasonably establish. In addition to the foregoing restrictions on signage, any party wishing to place a sign on anywhere on the Building according to this subsection shall obtain written approval from the Declarant for any such signage so long as Declarant owns a Unit or any portion of the Future Phase Property.

(c) Subdivision of Units. Subject to the provisions this Declaration, a Unit may be subdivided into two or more Units upon written application to the Association. The application for subdivision shall describe the structural and mechanical aspects of the subdivision and contain any other information the Association may reasonably require, and be accompanied by a plat prepared by an engineer or architect licensed in North Carolina detailing the subdivision of the Unit. If the Association approves the application to subdivide the Unit, the Association shall prepare an amendment to this Declaration which identifies the Unit so affected, states the reallocation of the Fractional Shares as may be reasonably determined by the subdividing Owner, assigns identifying numbers to the newly created Units and is executed by the Owner of the subdivided Unit. The Association shall also be responsible for preparing and recording, as part of the amendment to the Declaration, plats or plans necessary to show the new Unit boundaries and the dimensions of the newly created Units. Units resulting from the subdivision of a Residential Unit on the second, third or fourth floors of the Building shall only be Residential Units.

(d) Relocation of Unit Boundaries. Subject to the provisions of this Declaration, Unit boundaries may be relocated upon written application to the Association by the Owners of the affected Units. Any application for the relocation of Unit boundaries shall describe the structural and mechanical aspects of the relocation and contain any other information the Association may reasonably require, and be accompanied by a plat prepared by an engineer or architect licensed in North Carolina detailing the relocation of the boundaries between the affected Units. The Fractional Interests of the affected Units shall not be automatically reallocated; however, Unit Owners may request a certain reallocation in the application for the relocation of the Unit boundaries. If the Association approves the application to relocate Unit boundaries, the Association shall prepare an amendment to this Declaration which identifies the Units so affected, states the reallocation of the Fractional Shares, if any, is executed by all Owners of affected Units and the Association, contains words of conveyance, and is indexed in the name of the grantor and the grantee by the register of deeds. The

Association shall also be responsible for preparing and recording, as part of the amendment to the Declaration, plats or plans necessary to show the altered boundaries between the affected Units, the dimensions of the affected Units and the identifying numbers of the affected Units.

(e) Removal and Rebuilding of Partitions between Units. Subject to the provisions of this Declaration, Owners may remove or rebuild partitions dividing the Units upon written application to the Association. Any application for the removal or rebuilding of a partition between Units shall describe the structural and mechanical aspects of the removal or rebuilding and contain any other information the Association may reasonably require. The removal of a partition between Units under this subsection shall not constitute a relocation of Unit boundaries, and the Units affected will continue to be considered separate and distinct for purposes of this Declaration.

(f) Minimum Unit Size. Notwithstanding anything herein to the contrary, the minimum size of any Unit shall be four hundred fifty (450) square feet.

(g) Review and Response by Association; Obligations of Unit Owners. Prior to the commencement of any work, any Owner seeking to subdivide a Unit, relocate Unit boundaries, or remove or rebuild a partition dividing Units shall request permission from the Association in the form of a written application. Such application shall contain the information required by this Declaration and such other information that the Association may reasonably require. Upon receipt of such application, the Association shall have fifteen (15) calendar days to respond by approving in writing said request, denying in writing said request, or asking in writing for further information, under which condition the Association shall have no more than ten (10) additional calendar days after the additional information is delivered to the Association to render a decision either approving in writing the request or denying in writing the request. If the Association fails to respond to said request within fifteen (15) calendar days, or within ten (10) calendar days of being provided said additional information, then the request shall be deemed granted and the work may commence subject to all other provisions of this Declaration. Any decision by the Association to deny an application must be reasonable. The Association shall deny any application which in any way impairs the development rights of Declarant reserved by this Declaration, and such denial shall be deemed reasonable. The Unit Owner responsible for the work shall:

(i) Provide for waivers of all mechanics and materialmens lien rights which may arise as a result of the alteration if requested by the Association;

(ii) Comply with all applicable laws and secure all proper governmental permits, including, but not limited to building permits, necessary for the completion of the work;

(iii) Purchase insurance insuring against all losses commonly insured against arising out of the work and such other matters as the Association may reasonable require, name Declarant and the Association as additional insureds and provide certificates of insurance with respect to such insurance;

(iv) Indemnify and hold harmless the Declarant, the Association and all other Unit Owners from the effects of the work including, but not limited to, any damage resulting from any disturbance to, or compromise of, the structural support of the Building;

(v) Minimize the disturbance to other Unit Owners during the work;

(vi) Bear the cost to Declarant or the Association of expenses incurred as a result of the work, preparation of amendments to the Declaration and the plats and plans, and reimburse Declarant and the Association for any expenses incurred by Declarant or the Association in connection with said work, including but not limited to legal and other consulting fees; and

(vii) Upon completion of said work, the Owner responsible for the work shall deliver to the Association a copy of the "As Built" plans and specifications certified to by an architect licensed to practice in North Carolina.

(h) Declarant Review of Unit Upfit. Declarant hereby expressly reserves the right, at its sole discretion, to review and approve the plans and specifications for the upfit and customization of every Unit according to certain procedures that it may establish. Declarant also hereby reserves the right to enforce the provisions of this subsection (h) at law or equity, including, but not limited to, the right to compel a Unit Owner to comply with plans and specifications as approved under this subsection (h). Unit Owners shall begin upfit construction within two (2) months of closing on their Units, and shall complete the upfit construction within eight (8) months of closing on their Units. Declarant may appoint an agent for the purposes of acting for Declarant pursuant to this subsection. Prior to the commencement of any initial upfit work in a Unit the Unit Owner shall submit the plans and specifications for the upfit to Declarant for review and approval. The Declarant shall respond to the Unit Owner by approving said request, denying said request, or asking for further information, under which condition Declarant shall have no more than ten (10) additional calendar days after the additional information is delivered to Declarant to render a decision either approving the request or denying the request. If Declarant fails to respond to said request within fifteen (15) calendar days, or within ten (10) calendar days of being provided said additional information, then Declarant's approval of the request to upfit the Unit according to the plans and specifications submitted shall be deemed granted and the work may commence in conformance with the plans and specifications submitted subject to all other provisions of this Declaration. The Unit Owner responsible for the work shall:

(i) Provide for waivers of all mechanics and materialmens lien rights which may arise as a result of the alteration if requested by the Association;

(ii) Comply with all applicable laws and secure all proper governmental permits, including, but not limited to building permits, necessary for the completion of the work;

(iii) Purchase insurance insuring against all losses commonly insured against arising out of the work and such other matters as the Association may reasonably require, name Declarant and the Association as additional insureds and provide certificates of insurance with respect to such insurance;

(iv) Indemnify and hold the Declarant, the Association and all other Unit Owners harmless from the effect of the work including, but not limited to, any damage resulting from any disturbance to, or compromise of, the structural support of the Building;

(v) Minimize the disturbance to other Unit Owners during the work;
and

(vi) Reimburse the Declarant and the Association for any expenses incurred by the Association, including but not limited to legal and other consulting fees.

All the activities described in this section 3.6 shall be Special Declarant Rights which the Declarant is entitled to perform unilaterally at its sole discretion without approval of the Association at any time prior to the expiration of Declarant's Special Declarant Rights.

3.7 Shared Utilities. Certain utility services may be shared by more than one Unit, and those Unit(s) may also share such service(s) with the Common Elements. The Association shall maintain in its own name any utility account for a utility service which is shared by two (2) or more Units or the Common Elements. The Association shall receive and pay the invoices for such shared utility service, and shall bill the Units served by such service in an equitable manner as it may reasonable determine. Such charges shall be deemed Assessments under this Declaration and secured by a lien pursuant to N.C.G.S. §47C-3-116.

ARTICLE IV **COMMON ELEMENTS**

4.1 Common Elements. The real estate which comprises the Common Elements as of the recording of this Declaration is all of the Property except the Units. In addition to all of the rights reserved to Declarant hereunder, Declarant specifically reserves the right to improve, upgrade, expand, modify and enlarge the Common Elements, including the addition of certain easement rights in favor of Declarant. Subject to the other provisions of this Declaration, the Association shall be responsible for the maintenance, replacement and repair of the Common Elements and the cost for such maintenance, repair or replacement shall be borne by all the Unit Owners pursuant to this Declaration.

4.2 Limited Common Elements. The Limited Common Elements are identified and allocated as follows:

(a) The Limited Common Elements specified in section 47C-2-102(2) of the Act (being any pipe, vent, chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit,

or any portion thereof serving only that Unit) are allocated to the Units served by those Limited Common Elements.

(b) The Limited Common Elements specified in section 47C-2-102(4) of the Act (being any shutter, awning, window box, doorstep, stoop, deck, porch, balcony, patio and all exterior doors, windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries) are allocated to the Units served by those Limited Common Elements.

(c) Any hallway on a floor containing only Residential Units shall be a Limited Common Element allocated only to the Residential Units so served.

(d) All portions of all stairwells on and between the second, third, and fourth floors lying outside the boundaries of the Units shall be Limited Common Elements allocated only to the Residential Units.

(e) Certain Residential Units on the fourth floor (including the Penthouse) will have direct access to private outdoor patios. Each private outdoor patio shall be a Limited Common Element allocated only to the Unit so served by the private outdoor patio.

(f) Certain portions of the basement of the Building and sub-basements located beneath the basement of the Building which are not part of Unit A shall be Limited Common Elements allocated only to Unit A. The exclusive allocation of these basement and sub-basement areas to Unit A is subject to the use and operation of the mechanical systems which serve multiple Units and the easements described herein.

The Limited Common Elements which are established and allocated by (c) through (f) above are shown more particularly on the Plat. The Limited Common Elements described in (c) and (d) above are subject to the Special Declarant Rights in that they may be reallocated to serve more Units if Declarant adds Units to the Condominium. Subject to the other provisions of this Declaration, the Association shall be responsible for the maintenance, replacement and repair of the Limited Common Elements and the cost for such maintenance, repair or replacement shall be borne by the Unit Owner so benefited by the Limited Common Element, as more specifically set forth in the Bylaws.

4.3 Parking. There is no parking area within the Condominium. Declarant will make a reasonable good faith effort to provide, at Declarant's cost, for the period of one year after the issuance of the certificate of compliance for a Unit, one parking space per Unit in a City of Durham parking lot in which Declarant has month to month leases. Since the leases are month to month with the City of Durham as landlord, Declarant cannot guarantee that it will be able to provide any parking spaces for any amount of time. If any parking spaces are still available after this one year period, Declarant may delegate management of available parking spaces to the Association.

4.4 Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if the Owners

entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by Declarant, agree to that action; provided, that all the Unit Owners to which any Limited Common Element is allocated must agree in order to convey such Limited Common Element or subject it to a security interest. The procedure for conveying or encumbering a portion of the Common Elements and distributing the proceeds, if any, shall be that set forth in N.C.G.S. § 47C-3-112.

ARTICLE V
AMENDMENT; TERMINATION OF CONDOMINIUM

5.1 Amendment of Declaration.

(a) Except in cases of amendments by the Declarant, the Association, or certain Unit Owners pursuant to the exceptions provided in N.C.G.S. § 47C-2-117(a), the Declaration may be amended only by vote or agreement of Owners to which at least seventy five percent (75%) of the votes in the Association are allocated. Provided, however, where the act or approval of a greater percentage of the vote of Unit Owners is expressly required by this Declaration, the Act, or the Association's Articles of Incorporation or Bylaws, this Declaration may not be amended to decrease such greater percentage of votes without the consent of Unit Owners holding that greater percentage of votes.

(b) With the exception of those amendments to this Declaration which may be executed solely by Declarant under this Declaration or the Act, every amendment shall be prepared, executed, recorded and certified by the Association. Any amendment to this Declaration shall be effective only when recorded in the Durham County Registry.

(c) Subject to the Special Declarant Rights reserved in section 2.7 above and the exceptions of N.C.G.S. § 47C-2-117(a), no amendment which changes the boundaries of any Unit or which alters the allocation of Common Elements and Common Expenses for a Unit shall be valid unless the same has been signed or consented to by the Owner(s) so affected.

(d) Notwithstanding anything herein to the contrary, this Declaration may be amended by the Declarant or Association without the consent of any Owner in order to comply with any provisions of law or to correct manifest errors herein; and any such amendment, upon execution and certification by the Declarant or Association and recording by the Durham County Registry, shall be effective upon recording.

(e) Notwithstanding anything herein to the contrary, the Declaration shall not be amended in any way which derogates or impairs the Special Declarant Rights or any other rights or benefits reserved to the Declarant hereunder without the joinder of Declarant.

5.2 Termination. The dedication of the Property to the Condominium herein shall not be revoked, or the Property removed from the Act except that the Condominium may be terminated and the Property removed from the provisions of the Act by the agreement of Unit Owners to whom at least eighty percent (80%) of the votes in the Association are allocated, as

evidenced by execution of a termination agreement, or ratification thereof, by such Owners, provided that all the mortgagees of the Units (including those mortgagees of Unit Owners who did not consent) are provided with thirty (30) days prior written notice of such termination. Except as otherwise provided for herein, termination of the Condominium shall be in accordance with the Act.

5.3 Statutory Compliance. No amendment or termination that is contrary to, or inconsistent with, any requirements or provisions of the Act shall be valid.

ARTICLE VI

ALLOCATION OF COMMON ELEMENTS AND COMMON LIABILITIES; VOTES IN ASSOCIATION

The allocated interest of the title and interest appurtenant to each Unit and the Unit Owner's title and interest in the Common Elements of the Property and the proportionate share in the revenues, if any, and common monthly expenses as well as the proportionate representation for voting purposes in meetings of the Association (collectively referred to herein as the "Fractional Share") shall be the fraction having a numerator that is the square feet contained in that unit and a denominator that is the total square feet of all the units. The number of square feet in the Units is shown on the Plat and is certified by an architect. The Fractional Shares for all Units are set forth on Exhibit C and may be expressed in percentages. Declarant reserves the right to amend the Declaration without the approval of the Unit Owners to reallocate the Fractional Shares as a result of its exercise of Special Declarant Rights. Any reallocation of the Fractional Shares shall be pursuant to the formula described in this Article.

ARTICLE VII

ADMINISTRATION AND BYLAWS

7.1 Association; Bylaws. Declarant has caused to be incorporated under the laws of the State of North Carolina a nonprofit corporation known as Durham Kress Condominium Association. Each Unit Owner shall have voting rights in said Association equal to such Unit Owner's Fractional Share. The administration of the Condominium, and consequently of the Association, shall be in accordance with the provisions of the Bylaws which are incorporated herein by reference.

7.2 Automatic Membership in Association. Each Unit Owner shall automatically become and be a member of the Association upon being conveyed a fee interest in a Unit. In the event that a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all the record Owners of said Unit and filed with the Secretary of the Association and shall exercise such share of his vote in all matters. Further, should such Unit Owner be a corporation, limited liability company, partnership, trust, unincorporated association or other entity, said corporation, limited liability company, partnership, trust, unincorporated entity or other entity must designate, in a certificate signed by an officer, manager, partner or other authorized representative of such entity, the name of the individual authorized to vote on behalf of such entity, which certificate shall be filed with the

Secretary of the Association. All such certificates shall be valid until revoked, superseded by a subsequent certificate, or until there has been a change in ownership of the Unit concerned. If such certificate is not filed with the Secretary of the Association, the Association shall be entitled to recognize and rely upon the authority of any individual who states that he or she represents such entity with respect to matters involving such entity's membership in the Association, including the right to vote, unless the lack of authority of such individual is manifest.

ARTICLE VIII

GENERAL CONDITIONS; MISCELLANEOUS MATTERS

8.1 Common Elements Not Partitioned. Except as provided, the Common Elements and Limited Common Elements shall remain undivided and no Unit Owner shall bring any action for partition and/or division of same.

8.2 Common Elements Not Severable from Units. The undivided interest in the Common Elements and Limited Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

8.3 Provisions and Covenants Applicable to Units. Each Unit Owner shall comply with the provisions this Declaration, all exhibits hereto, and authorized amendments hereto. The failure to comply with such provisions, decisions, or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief. The Units shall also be conveyed subject to the recorded Plat and amendments thereto. The acceptance of a deed of conveyance or the entering into of a lease for any portion of the Property or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules of conduct which may be adopted by the Association are accepted and ratified by such Owner, tenant or occupant, and an agreement that 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 such provisions were made a part of each and every deed of conveyance or lease.

8.4 Nonuse Not Exemption of Liability for Common Expenses. No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

8.5 All Users of Property Subject to Declaration. All present or future Unit Owners and any other person that might use the facilities of the Property in any manner, including those who may lease a Unit from the Declarant, are subject to the provisions of this Declaration and any authorized amendments thereto, and the mere acquisition or rental of any of the Units shall signify that the provisions of this Declaration and any authorized amendment thereto are accepted and ratified.

8.6 Assessments Subordinate to Mortgagee Taking Title. Where a mortgagee or other purchaser of a Unit obtains title by reason of foreclosure or deed in lieu of foreclosure of a deed

of trust encumbering a Unit, such acquirer of title, his or its heirs, successors, assigns or grantees, shall not be liable for assessments by the Association which became due prior to the acquisition of title by such acquirer, it being understood however, that the above shall not be construed to prevent the Association from filing and claiming liens for such unpaid assessments and enforcing the same as provided by law, and provided that such assessments shall be subordinate to such deed of trust.

8.7 Condemnation. In the event of an action for eminent domain or a condemnation of all or a portion of the Property which is subject to this Condominium, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. § 47C-1-107.

8.8 Non-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.

8.9 Gender And Number. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

8.10 Applicable Law; Interpretation. This Declaration is set forth to comply with the requirements of the Act as presently constituted or as hereafter amended. In case any of the provisions stated above conflict with the provisions of the Act, the provisions of the Act shall control. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best affect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed herein, and which will preserve the Property as a site for an attractive, well-maintained, mixed use community.

Should any provision of this Declaration or any section, paragraph sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Contrary to the restrictive common law rule of construction, this Declaration shall by this covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Declaration, to covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant and/or Association, and any other covenant, condition, restriction or obligation within this Declaration is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible value associated with the Property, and does touch and concern, benefit and burden and run with the Property.

8.11 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

8.12 Exhibits. All exhibits to this Condominium shall be an integral part of this instrument.

ARTICLE IX INSURANCE; RECONSTRUCTION AND REPAIR

9.1 Insurance. The Association shall be required to obtain and maintain insurance policies that include the minimum coverages of (i) 100% replacement coverage on the Building, less a commercially reasonable deductible amount, (ii) liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000.00 per accident, and (iii) fidelity bond coverage covering the Executive Board members, officers and employees of the Association in a reasonable amount. The Association shall be required to insure all the Units at 100% replacement coverage; however, the Association shall not be responsible for insuring improvements and betterments made to those Units. Additional provisions governing insurance are contained in the Bylaws.

9.2 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his Unit, his personal property, including his automobile, public liability insurance, and such other insurance coverage as he may desire. Each Residential Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000 for bodily injury, including death, of persons and property damage, arising out of a single occurrence, and each Commercial Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$250,000 for bodily injury, including death, of persons and property damage, arising out of a single occurrence. All such insurance policies shall include, however, provisions waiving (i) any right of the insurer to subrogation claims against the Association and against Unit Owners and their household members, employees and invitees, as well as their tenants and such tenant's employees and invitees; and (ii) any right of the insurer to contribution or pro-ratio because of the Association's casualty and public liability policy.

At the request of the Association, each Owner shall certify at the closing of the purchase of a Unit that such an individual policy has been obtained.

9.3 Reconstruction. In the event of casualty loss or damage to the Property the provisions of N.C.G.S. § 47C-3-113(h) shall govern all matters pertaining to reconstruction and repair.

ARTICLE X **EASEMENTS**

10.1 General Reserved Easements. The Declarant expressly reserves such easements through the Common Elements as described in N.C.G.S. § 47C-2-116. There is reserved for the benefit of the Association the right to grant easements at any time for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone and television or cable television wires, cables and equipment, electrical conduits, and wires over, under, along and on any portion of the Common Elements. Easements for installation and maintenance of utilities and drainage facilities, if any, are also reserved as shown on the Plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.

10.2 Easement for Encroachment. If any portion of the Common Elements now or in the future encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachments shall occur hereafter as a result of: (a) settling of the Building; (b) alteration or repair to the Common Elements made by or with consent of the Association or; (c) as a result of repair or restoration of a Building or any Unit made necessary because of damage by fire or other casualty; or (d) as a result of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Building or Buildings stand.

10.3 General Condominium Easements. Each Unit Owner shall have a nonexclusive easement in common with all Unit Owners to use the Common Elements, including all pipes, wires, ducts, flues, cables, conduits, public, utility lines and other Common Elements, if any, located in any of the other Units and serving his Unit. To the extent that there are Common Elements within Units, each Unit shall be subject to a nonexclusive easement in favor of all other Unit Owners to use the pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right of access to each Unit to inspect the same to remove violations therefrom and to maintain, repair or replace Common Elements contained therein or elsewhere on the Property.

10.4 Construction Easement. Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements on or within the Units, Common Elements or Future Phase Property. Declarant shall also have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights as provided herein. The easements reserved in favor of Declarant herein shall be construed expansively and are intended to allow, among other things, Declarant to exercise its reserved right to develop the Future Phase Property. This construction easement is expressly intended to burden and extend to, but shall not be limited to, those portions of the Building shell to which another structure may be connected

and those portions of the Common Elements that Declarant may use in the exercise of its right to develop the Future Phase Property.

10.5 Emergency Repair. The Association shall have a right of entry upon the Units and any Limited Common Elements to affect emergency repairs, and a reasonable right of entry upon the Units to affect other repairs, improvements, replacement or maintenance made for the benefit of the Unit entered or another Unit.

10.6 Easements Appurtenant. All easements granted herein are appurtenant to and shall run with the land, and shall inure to the benefit of and be binding upon the Declarant, the Association, Owners, occupants, mortgagees, and any other person or entity having an interest in the Condominium as described herein.

10.7 Storage Closet Easement and Access Easements. There are storage closets for the use and benefit of the Residential Owners located in the basement of the Building in the Commercial Unit A. Therefore, the portion of the Commercial Unit A containing the storage closets shall be subject to an easement appurtenant to the Residential Units, which easement shall be for the limited purpose of allowing Residential Unit Owners to make reasonable use of the storage closets. To access the storage closets, the Residential Unit Owners will have to pass over and through certain portions of the Commercial Unit A and over certain Limited Common Elements allocated exclusively to Commercial Unit A, including the halls, elevator shafts, and stairwells. Therefore, the Commercial Unit A and the portions of the Limited Common Elements allocated to the Commercial Unit A shall be subject to a pedestrian access easement appurtenant to the Residential Units, which easement shall be for the limited purpose of allowing Residential Unit Owners access to the storage closets for the Residential Units. This access easement shall specifically burden, but shall be expressly limited to, those areas over and through which it is necessary for the Residential Unit Owners to pass for the purposes of ingress and egress to and from the storage closets and making reasonable use of the storage closets. Upon thirty (30) days written notice to the Residential Unit Owners, the Owner of Commercial Unit A shall be entitled to relocate the storage closet easement to a different area of the basement if such relocation is directly necessitated by a reconfiguration of the Commercial Unit A for business purposes. In the event the Owner of Commercial Unit A shall relocate the storage closets, the Owner of Commercial Unit A shall (i) provide equivalent secure storage closets of similar sizes; (ii) provide interim secure storage if necessary; (iii) provide reasonable access to the Residential Unit Owners to allow them to move their belongings; and (iv) indemnify and hold the Residential Unit Owners harmless from any liability or property damage related to, or resulting from, the relocation of the storage closets. The Association shall be responsible for recording an instrument executed by the Association and the Owner of Commercial Unit A which describes the relocation of the easement. Any cost incurred in relocating the storage closets and the easement shall be borne by the Owner of the Commercial Unit A. The Owner of Commercial Unit A shall be entitled to relocate the access easements described in this subsection from time to time as the interior partitions in the Commercial Unit A may be reconfigured so long as the relocated easements reasonably serve the intended purposes. The cost of maintenance, repair or replacement of the storage closets shall be borne by the Unit Owners to which the storage closets are assigned.

10.8 Sub-Basement Access Easement. The Building contains sub-basement areas which lie below the basement and which are only accessible through the basement of the Building which is part of the Commercial Unit A. Portions of the sub-basements are Limited Common Elements allocated for the exclusive use of the Commercial Unit A, which exclusive use by Commercial Unit A is subject to the use and operation of certain mechanical systems serving multiple Units. The Commercial Unit A and the Limited Common Elements allocated for the exclusive use of Commercial Unit A shall be subject to an access easement appurtenant to all Units for the purposes of ingress and egress to and from the sub-basements so that those mechanical systems located in the sub-basements can be serviced, inspected, maintained, replaced and repaired. The Owner of Commercial Unit A shall be entitled to relocate the access easements described in this subsection from time to time as the interior partitions in the Commercial Unit A may be reconfigured so long as the relocated access easements reasonably serve the intended purposes.

10.9 Mechanical Room Easement and Access Easements. There are is a mechanical room in the basement of the Building which is part of the Limited Common Elements allocated exclusively the Commercial Unit A which contains certain mechanical equipment (including, but not limited to, heating, ventilation and air conditioning equipment and sprinkler system equipment) serving the basement, first floor, mezzanine level and the Common Elements of the second, third and fourth floors of the Building. Therefore, the portion of the Limited Common Elements allocated exclusively to Commercial Unit A containing the mechanical room shall be subject to an easement in favor of the all Units. The location of the mechanical room is more particularly shown on the Plat. To access the mechanical closet, it is necessary to pass over and through certain portions of the Commercial Unit A and the Limited Common Elements allocated exclusively to the Commercial Unit A, including the halls, elevator shafts, and stairwells. Therefore, the Commercial Unit A and the Limited Common Elements allocated exclusively to the Commercial Unit A shall be subject to a pedestrian access easement for the limited purpose of allowing the Association, its agents and contractors, reasonable access to the mechanical room for the purposes of inspection, maintenance, repair and replacement of the equipment therein contained. This access easement shall specifically burden, but shall be expressly limited to, those areas over and through which it is necessary for the Association, its agents and contractors, to pass for the purposes of ingress and egress to and from the mechanical room. The Owner of Commercial Unit A shall be entitled to relocate the access easements described in this subsection from time to time as the interior partitions in the Commercial Unit A may be reconfigured so long as the relocated access easements reasonably serve the intended purposes.

ARTICLE XI **LENDER CONSENT**

The Land and the Building are currently encumbered by the liens of those deeds of trust, as amended, executed and delivered by Declarant to BB&T Collateral Service Corporation, as Trustee, for the benefit of Branch Banking and Trust Company and recorded in Book 4901, Page 233; Book 5316, Page 347; and Book 5616, Page 634, Durham County Registry. A Consent of

execution and recordation of this Declaration is attached hereto as Exhibit D and made a part of this Declaration.

ARTICLE XII
GENERAL ASSOCIATION MATTERS

12.1 Powers of Executive Board. All powers granted in the Declaration or the Bylaws to the Association shall be exercisable by the Executive Board, except as otherwise expressly provided in the Declaration, the Bylaws, or the Act.

12.2 Rules of Conduct. The Association may adopt and enforce reasonable rules of conduct not in conflict with the Declaration and supplementary thereto, as more fully provided in the Bylaws. A copy of the rules of conduct that exist as of the filing of this Declaration are attached to the Bylaws as an appendix.

12.3 Enforcement by Association. The Association shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association. The enforcement powers of the Association shall include the power to fine Unit Owners as described in the Bylaws. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

Upon notice to the Association of a violation hereunder and a failure of the Association to take action upon said violation within ninety (90) days, any Owner, or other holder of an interest in the Condominium may undertake the enforcement of the provisions of the Declaration at his own expense.

12.4 Storage Closets. In the basement of the Building (which is part of the Commercial Unit) there are storage closets for the use and benefit of the Residential Unit Owners. The Association shall assign these storage closets to particular Units according to a reasonable procedure which it shall establish based on the relative sizes of the Units.

ARTICLE XIII
RESERVED DEVELOPMENT RIGHTS

Declarant, its successors and assigns, hereby expressly reserves the right to submit the Future Phase Property, or any portion thereof by phasing in any order of priority, to the provisions of this Declaration and thereby cause the Future Phase Property, or any portion thereof, to become and forever be a part of Durham Kress Condominium in the same manner as if made a part thereof in every particular upon the initial execution and filing of this Declaration. Declarant makes no representation that the Future Phase Property, or any portion thereof, will ever be added to the Condominium. Declarant also expressly reserves the right to make improvements on the Future Phase Property, or any portion thereof, in one or more phases. However, Declarant makes no representation that any improvements will be made on the Future

Phase Property. Declarant may add the Future Phase Property to the Condominium prior to, during, or after the construction of any improvements thereon. The Future Phase Property is shown and described on the Plat using one single perimetric boundary since the location of any phase lines have not been determined. Declarant, its successors and assigns, expressly reserves the right to establish the location of said phase lines prior to or simultaneously with the annexation of the future phases; however, no assurances are made as to the location of said boundaries or the order in which the various parcels are to be added to the Condominium. Further, the addition of a portion of the Future Phase Property to the Condominium or construction of improvements only on a certain portion of the Future Phase Property will not subject the Declarant to add any other Future Phase Property to the Condominium or make improvements upon the Future Phase Property in any particular time, manner, size or order, except that any development on the Future Phase Property which is made part of Durham Kress Condominium will be designed to complement the Building in scale, massing, and design. The rights reserved herein are not obligations of Declarant, and Declarant makes no representation as to the nature of any development on the Future Phase Property or whether the Future Phase Property will be developed by Declarant or added to the Condominium in total or in part. Any exercise of any right reserved by Declarant under this Declaration shall be at the sole discretion of Declarant unless otherwise expressly stated herein to the contrary.

These rights described in this Article may be exercised by Declarant, its successors, grantees and assigns upon execution of an amendment or amendments to this Declaration, which amendments shall be recorded in the Office of the Registers of Deeds for Durham County on or before that date which is fifty (50) years from the date of recordation of this Declaration. Any such amendments shall conform to the various provisions and conditions precedent established in this Declaration and in the Act. The provisions of this Declaration which reserve and establish Declarant's right to develop the Future Phase Property and add it to the Condominium shall be interpreted expansively in favor of Declarant to permit it maximum flexibility in its development of the Future Phase Property.

[Declarant's signature page follows this page.]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed
this 18th day of June 2007.

Durham Kress, LLC, a North Carolina limited liability company

By: Michael Lemanski (Seal)
Michael Lemanski, Manager

STATE OF NORTH CAROLINA

COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, each
acknowledging to me that he or she signed the foregoing: Michael Lemanski.

Date: 6/18/2007

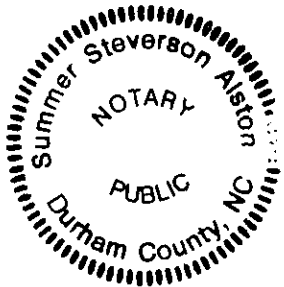
[Signature]

Notary Public

Print Summer Steverson Alston

Name: Summer Steverson Alston
[Official Seal]

My commission expires: 2/10/2012



**EXHIBIT A
TO
DECLARATION
OF
DURHAM KRESS CONDOMINIUM**

Legal Description of Property

BEING all of that certain parcel containing .20 acres and labeled "Durham Kress Condominium" as shown on that survey entitled "Final Condominium Plat of: Durham Kress Condominium" by S.D. Puckett & Associates and recorded in Condominium Plat Book 9, Page 159, Durham County Registry.

This parcel has a street address of 101-103 West Main Street, Durham, North Carolina.

**EXHIBIT B
TO
DECLARATION
OF
DURHAM KRESS CONDOMINIUM**

Legal Description of Future Phase Property

BEING all of that certain parcel containing .15 acres and labeled "Future Phase Property" as shown on that survey entitled "Final Condominium Plat of: Durham Kress Condominium" by S.D. Puckett & Associates and recorded in Condominium Plat Book 9, Page 159, Durham County Registry.

This parcel has a street address of 162 West Ramseur Street, Durham, North Carolina.

**EXHIBIT C
TO
DECLARATION
OF
DURHAM KRESS CONDOMINIUM**

Fractional Share of Units

<u>Unit Description</u>	<u>Type of Unit</u>	<u>SF in Unit</u>	<u>Fractional Share</u>
A	Commercial	7,214	18.76%
B	Commercial	5,153	13.40%
C	Commercial	7,306	19.00%
201	Residential	1,505	3.91%
202	Residential	646	1.68%
203	Residential	968	2.52%
204	Residential	1,321	3.43%
205	Residential	1,256	3.27%
206-306	Residential	552	1.44%
301-401	Residential	765	1.99%
302-402	Residential	1,321	3.44%
303-403	Residential	1,178	3.06%
304	Residential	1,328	3.45%
305	Residential	1,254	3.26%
206-306	Residential	543	1.41%
301-401	Residential	459	1.19%
302-402	Residential	610	1.59%
303-403	Residential	434	1.13%
404	Residential	1,840	4.79%
405/Penthouse	Residential	2,294	5.97%
406	Residential	508	1.32%
Totals		38,455	100.00%

The square footages are taken from the Plat and rounded, and the Fractional Shares are rounded.

This table may be amended from time to time in accordance with the Declaration.

**EXHIBIT D
TO
DECLARATION
OF
DURHAM KRESS CONDOMINIUM**

Consent of Lender

[The Consent of Lender follows this page.]

STATE OF NORTH CAROLINA)
)
COUNTY OF DURHAM)

CONSENT OF LENDER

THIS CONSENT OF LENDER is made this 17 day of May, 2007 by Branch Banking and Trust Company ("Lender) and BB&T Collateral Service Corporation ("Trustee").

WITNESSETH:

WHEREAS, Lender is the beneficiary of development and construction loan deeds of trust recorded in Book 4901, Page 233; Book 5316, Page 347; and Book 5616, Page 634 Durham County Registry (collectively, the "Deeds of Trust") which encumber certain real property located in The City of Durham, North Carolina, the property encumbered by the Deeds of Trust being a part of the property described in Exhibit A (the "Property") of the Amended and Restated Declaration of Durham Kress Condominium (the "Declaration");

NOW, KNOW ALL MEN BY THESE PRESENTS, that Lender joins in the foregoing Declaration of Durham Kress Condominium and the provisions of the North Carolina Condominium Act for the sole purpose of consenting to the creation by the Declarant of the Condominium on the property upon which it has a lien. The Lender makes no representations or warranties as to the validity of the documents creating the Condominium nor the development and physical construction of the Condominium itself. The Lender agrees that the lien of its Deeds of Trust on the property being submitted to the Condominium shall hereafter be upon the Units, the interests in common elements, and other rights appertaining to those units, and that any subsequent foreclosure of the Lender's lien shall not extinguish this Declaration but shall merely vest in Lender the rights and duties set forth herein, provided, however, that should Lender acquire title to the property secured by the Deeds of Trust, any liability Lender shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; that the submission of the property to the North Carolina Condominium Act will not trigger the "due-on-sale" clause in the Deeds of Trust, should such clause exist; and, that upon full satisfaction of the loans secured by the Deeds of Trust, the rights of Lender and the Trustee (or such successor trustees as permitted by the Deeds of Trust) set forth in this Declaration shall terminate.

[Signature page follows.]

IN WITNESS WHEREOF, Lender and Trustee have caused this instrument to be executed and effective as of the day and year first above written.

LENDER:

Branch Banking and Trust Company

By: Tim C Dalton
Name: Timothy C. Dalton
Title: Vice President

TRUSTEE:

BB&T Collateral Service Corporation

By: Erin W. Pyle
Name: Erin W. Pyle
Title: SVP

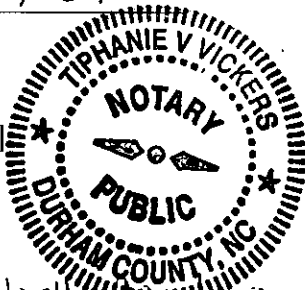
STATE OF North Carolina
COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Timothy C. Dalton
[insert name(s) of person(s) in blank].

Date: 5-17-07

[Official Seal]



Tiphannie V. Vickers
Notary Public

Print Name: Tiphannie V. Vickers

My commission expires: 10/29/2011

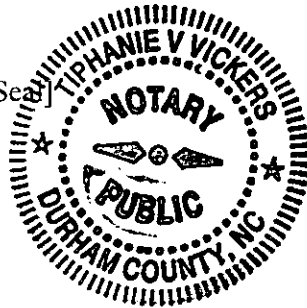
STATE OF North Carolina
COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Earl W. Tye
[insert name(s) of person(s) in blank].

Date: 5-17-07

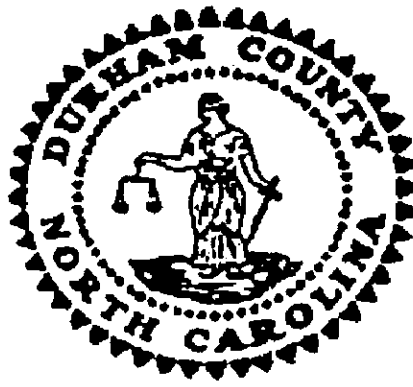
[Official Seal]



Tiphannie V. Vickers
Notary Public

Print Name: Tiphannie V. Vickers

My commission expires: 10/29/2011



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

PLEASE RETAIN YELLOW TRAILER PAGE

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

Filed For Registration: 06/19/2007 09:34:50 AM

Book: RE 5647 Page: 462-498

Document No.: 2007027622

AMD 37 PGS \$119.00

Recorder: SHARON M CEARNEL



2007027622