

Prepared By & Return To: John A. Northen; Northen Blue, L.L.P.  
Post Office Box 2208, Chapel Hill, NC 27515-2208

PIN: 9880-25-7951

TM: 7.17..10D

**DECLARATION OF CONDOMINIUM UNDER THE PROVISIONS OF CHAPTER 47C  
OF THE GENERAL STATUTES OF NORTH CAROLINA  
FOR TIMBERHILL II CONDOMINIUMS**

This Declaration is made on the date hereinafter set forth by Resolute Development Corporation, Post Office Box 3656, Chapel Hill, North Carolina 27515, hereinafter referred to as the "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in Orange County, North Carolina, which is more particularly described in the attached Exhibit A, and generally described as TimberHill II Condominiums; and

Whereas, Declarant desires and intends to divide the building and certain improvements constructed or to be constructed upon said property into condominium units, or "units" as those terms are defined under the provisions of the North Carolina Condominium Act, and to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed, and

WHEREAS, Declarant desires and intends by the filing of this Declaration, to submit the above described property and the building to be located thereon and all other improvements to be constructed, together with all appurtenances thereto, to the provisions of the North Carolina Condominium Act.

NOW THEREFORE, the Declarant does hereby publish and declare that all of the property as described in Paragraph 2 below is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium units and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions: To the extent applicable to this Declaration and not inconsistent herewith, all definitions contained and set forth in the North Carolina Condominium Act, as of this time being Chapter 47C of the General Statutes of North Carolina and as the same may be amended from time to time (herein referred to as "the Act"), are incorporated herein by reference and shall have the same force and effect as if set forth verbatim and made a part hereof.

2. Descriptions and Unit Designations:

(a) The description of the land on which the building and improvements are to be located is set forth in the Exhibit A attached to this Declaration.

(b) The building to be located upon the land (as described in Exhibit A) shall be one two-story building of steel frame, masonry veneer construction, containing a maximum of sixteen (16) condominium units.

The building referred to hereinabove is more particularly described and portrayed in the plans of said building, a copy of which is attached to this Declaration and made a part hereof. As-built plans shall be filed with the Register of Deeds as and when units are subdivided and to be

conveyed, showing all particulars of the building including the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, and location of the common elements affording access to each unit. Such plans shall bear the verified statement of a registered architect or licensed professional engineer, certifying that said plans are an accurate copy of the plans of said building, as built.

(c) The unit designation of each unit and the floor level on which said unit is to be located, subject to further amendment, are as follows:

<u>Wing and Floor Level</u>	<u>Unit Numbers</u>
First Floor	108,109,110,111
Second Floor	207,208,209,210

Note: The Declarant has reserved to itself or its assigns the right to combine, recombine, subdivide or reconfigure any of the proposed units prior to the conveyance of such unit.

The unit designation of each condominium unit, its location, its dimensions, approximate area, number of rooms and common facilities to which it has immediate access, and other data concerning its proper identification are set forth in the plans attached to this Declaration and made a part hereof as referred to hereinabove, or in plans to be subsequently recorded as and when the respective units are completed and to be conveyed.

Each unit is to be bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, as provided in General Statutes Section 47C-2-102, subject to such encroachments as are contained in the building, whether the same now exist or may be caused or created by construction, settlement or

movement of the building, or by permissible repairs, construction or alteration, as provided in General Statutes Section 47C-2-114.

3. Common Elements: The common areas and facilities will consist of all parts of the building situated on the property described in Paragraph 2 hereinabove, other than the individual units therein, including, without limitation, the following (except such portions of the following as may be included within an individual unit):

(a) The land on which the building is to be erected and all lands surrounding the building as is more fully described in Exhibit A to this Declaration.

(b) All foundations, columns, girders, beams, supports and other structural members.

(c) All exterior walls and interior walls except those partitioned walls wholly within a unit.

(d) Roofs, outside steps, walks, parking lots, drives, bridge or bridges, and entrances to and exits from the building(s).

(e) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heat, refrigeration, air conditioning, incinerating and all other mechanical equipment pertaining thereto existing for common use, and not separately metered for individual units.

(f) All sewer pipes.

(g) All other parts of the property and all apparatus and installations existing in the building or upon the property intended for common use or necessary for or convenient to the existence, maintenance or safety of the property.

The initial undivided interest of each unit owner in the common elements above described is as set forth on the attached Exhibit B. The undivided interest of each unit owner in the common

elements as herein set forth shall not be altered except by (a) Declarant or its assigns in connection with the combination, recombination, subordination or reconfiguration of any unit prior to the initial conveyance thereof (subject to the limitation on the maximum number of units set forth herein), (b) the relocation of boundaries between adjoining units with the consent of the owners of such units, or (c) with the unanimous consent of all unit owners in an amendment to this declaration.

The heat pumps serving individual units shall be deemed limited common elements of the respective units served thereby, along with the ductwork, wires, and conduit associated therewith.

4. Association of Unit Owners: The administration of the condominium project shall be vested in its association of unit owners to be known as TimberHill II Condominiums Unit Owners Association, Inc. in accordance with the Bylaws appended hereto as Exhibit C and the Articles of Incorporation appended hereto as Exhibit D. The membership of the association shall consist of all of the unit owners of the project, including the Declarant so long as said Declarant retains ownership of one or more of the units. The owner of any unit, upon acquiring title thereto, shall automatically become a member of said Association, and shall be required to remain a member thereof until such time as his, her, or its ownership of such unit ceases for any reason, when his, her or its membership in said Association shall automatically cease. Operation of the project and the maintenance, repair, replacement and operation of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of the North Carolina Condominium Act, this Declaration, and the Articles and Bylaws of said Association.

5. Use. The building and each of the units shall be used for general business, office, or retail purposes only. Any unit may be used for office purposes; however, Declarant reserves the

exclusive right to designate which unit(s) may be used for retail purposes, until such time as all units have been conveyed by Declarant or a written designation of units approved for retail purposes is filed with the Register of Deeds. No residential use shall be permitted, and any person purchasing or contracting to purchase a unit shall be conclusively deemed to have waived the applicability of Article 4 (Sec. 47C-4-101 et seq.) of the North Carolina Condominium Act. Any unit owner may delegate to tenants, in accordance with the Bylaws of the Association, his rights of possession, use and enjoyment of his unit and the common elements.

6. Person to Receive Service of Process: David F. Anna is hereby designated to receive service of process in any action which may be brought against or in relation to this condominium. Said person's place of business is The Resolute Building Company, 111 Cloister Court, Ste 200, P.O. Box 3656, Chapel Hill, NC 27515, which is within the city or county where the condominium is located.

7. Easements. Declarant, the Association, and each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, lines, wires, ducts, cables, conduits, public utility lines and other common elements serving such other units and located in such other unit. The Board of Directors hereafter may grant rights of way, common drive or access agreements, or easements for utility purposes over and across the common areas and for the benefit of the property or adjacent tracts, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment, electrical conduits and wires, common drives, shared buffers or landscaping under,

upon, or within any portion of the common elements; and each unit owner hereby grants the Board of Directors an 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.

8. Partitioning: The common elements shall not be divided nor shall any right to partition any portion thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a condominium unit by the entirety, jointly, or in common, or in any other form by law permitted.

9. Liens: While the property remains subject to this Declaration and the provisions of the North Carolina Condominium Act, no liens of any nature shall arise or be created against the common elements except with the consent in writing of at least eighty percent (80%) of the votes allocated to units, except such liens as may arise or be created against the several units and their respective common interests under the provisions of the North Carolina Condominium Act. Every agreement for the performance of labor, or the furnishing of materials to the common elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the right to file a mechanic's lien or other similar lien by reason of labor performed or materials furnished is waived.

10. Nature of Interest in Units: Every condominium unit, together with its undivided interest in the common elements, for all purposes shall be and it hereby is declared to be a separate parcel of real property and the unit owner thereof shall be entitled to the exclusive ownership and possession of its condominium unit subject only to the covenants, restrictions and easements as may be contained herein and the Bylaws of the Association and the Rules and Regulations adopted pursuant thereto and the resolutions and decisions of the Board of Directors.

11. Insurance: Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies: All insurance policies insuring the condominium property shall be purchased by the Board of Directors for the benefit of the Board of Directors and the unit owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance to the mortgagees of unit owners certificates of mortgagee endorsements. Unit owners may, at their option, obtain insurance coverage at their own expense and upon their own personal property and for their personal liability and such other coverage as they may desire.

(b) Coverage: The building and all improvements upon the land and all personal property included in the common elements shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage, and not less than eighty percent (80%) of the replacement cost. Such coverage shall provide protection against

(1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use.

Public liability insurance shall be secured in such amount and with such coverage as shall be deemed necessary by the Board of Directors, including but not limited to an endorsement to cover liability of the unit owners as a group to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors from time to time shall determine to be desirable and necessary.



(c) **Premiums:** Premiums for insurance policies purchased by the Board of Directors shall be paid by the Association as a common expense, and shall be assessed in proportion to risk.

(d) **Proceeds:** All insurance policies purchased by the Board of Directors shall be for the benefit of the Association and the unit owners, and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustees under this Declaration. The sole duty of the Board of Directors as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the Bylaws and for the benefit of the unit owners and their mortgagees in the following shares:

(1) Proceeds on account of damage to common elements shall be held as and in the nature of an undivided share for each unit owner, such share being the same as each unit owner's undivided interest in the common elements as set forth herein.

(2) Proceeds on account of damage to units shall be held as follows:

(A) When the building is to be restored - for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board of Directors, such proceeds to be held in undivided shares.

(B) When the building is not to be restored - an apportioned share for each unit owner of the damaged units with such apportionment to be a ratio identical to the ratio which each unit owner's undivided interest in the common areas and facilities bears to the total of such owners' interests.

(3) In the event a mortgage endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear.

12. Distribution of Insurance Proceeds: Proceeds of insurance policies received by the Board of Directors as insurance trustees shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Expenses of the Trust: All expenses of the insurance trustees shall be first paid or provision made therefor.

(b) Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided by Paragraph 13 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

(c) Failure to Reconstruct or Repair: If it is determined as provided herein that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners thereof.

13. Damage and Destruction: Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and restored by the Board of Directors using the proceeds of insurance on the building for that purpose and unit owners shall be liable for assessment of any deficiency; provided, however, if the building (or if more than one, the entire group of buildings) be more than two-thirds destroyed by fire or other casualty and the owners of the units to which at least eighty percent (80%) of the votes in the Association are allocated resolve not to proceed with reconstruction or restoration, then in that event the property shall either be (a) sold or otherwise transferred as provided in General Statutes Section 47C-2-118, or (b) deemed to be owned tenants in common by the unit owners of the destroyed building(s) and subject to the provisions of General Statutes Section 47C-2-118 as the same exists at the date hereof or as

amended hereafter. The determination of whether to sell the property or to make the property subject to the provisions of General Statutes Section 47C-2-118 shall be by affirmative vote of the owners of the units to which at least eighty percent (80%) of the votes in the Association are allocated.

Any reconstruction or repair shall be in accordance with the plans of the original building, portions of which are attached hereto as exhibits; and if not, then according to the plans and specifications approved by the Board of Directors.

14. Reservation of Special Declarant Rights: For a period not exceeding 120 days after conveyance of seventy-five percent (75%) of the aggregate square footage of the units (including units which may be created pursuant to special declarant rights) to unit owners other than Declarant or its assigns, two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business, or two (2) years after any development right to add new units was last exercised, whichever should first occur, Declarant reserves the following special rights:

(1) The right to complete improvements indicated on plats and plans filed with the Declaration, as provided in General Statutes Section 47C-2-109.

(2) The right to exercise any development right reserved herein as provided in General Statutes Section 47C-2-105(a)(8) and Section 47C-2-110, including but not limited to the right to subdivide or convert a unit previously created into additional units, common elements, or both.

(3) The right to maintain sales offices, management offices, signs advertising the condominium, and models in units or on common elements as provided in General Statutes Section 47C-2-115, provided that no more than one unit shall be used for such purposes at any one time.

(4) The right to use easements through the common elements for the purpose of making improvements within the condominium as provided in General Statutes Section 47C-2-116.

(5) The right to appoint or remove any officer of the Association or any member of the Board of Directors, subject to the limitations herein contained and those set forth in General Statutes Section 47C-3-103(d) and (e).

15. Subordination: Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but the title to any unit or any interest therein is subject to this Declaration.

16. Restrictions:

(a) It shall be the responsibility of each unit owner and the Board of Directors to prevent the development of any unclean, unsightly, or unkept conditions of the building or grounds on such property, which shall tend to decrease the beauty of the condominium as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on, in, or upon any unit, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to the condominium or to other unit owners. There shall not be maintained in or upon any unit any plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in the condominium by the other unit owners thereof.

(c) No commercial signs (including "For Rent," "For Sale," and other similar sign), or property identification signs, shall be erected or maintained on any unit, except during the initial period of Declarant control set forth above or with the written permission of the Board of

Directors, or except as may be required by legal proceedings, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary.

(d) Garbage and trash shall be disposed of only in areas specifically designated therefor.

(e) No structure of a temporary character shall be placed upon the property at any time.

(f) No tent, barn, storage shed, garage, tree house or other similar outbuilding or similar structure shall be placed on the property at any time, either temporarily or permanently.

(g) No trailer, camper, boat, mobile home, van or any other motor vehicle other than conventional passenger automobiles or motorcycles or motor scooters shall be privileged to use the parking areas located and situate upon the project, and the Board of Directors may designate parking spaces as assigned to the owner of each unit and reserved to the exclusive use of the unit owner.

(h) No unit shall be used except for retail or office purposes, and the provisions of General Statutes Section 47C-4-101, et. sec. shall be deemed waived by all purchasers of these units.

(i) The Unit Owners and the Association shall adopt, implement and encourage compliance with and participation by all owners or occupants of Units in the Transportation Management Plan for the project as submitted to and approved by the Town of Chapel Hill. The Association will supply annual reports to the Town, providing such information as may be reasonably required or requested by the Town with respect to the Transportation Management Plan and the implementation thereof.

(j) All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from the date of recordation of this Declaration, after which time said

covenants shall be extended automatically for successive periods of ten (10) years unless the condominium is terminated as provided in General Statutes Section 47C-2-118.

(k) In the event of a violation or breach of any of the restrictions contained in this Declaration, the Bylaws, or the Rules and Regulations adopted by the Board of Directors, by any property owner or guest, invitee, or agent of such owner, the Association, the owners of units, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing and in the event there shall have been any violation of these restrictions, Declarant shall have the right at any time until six (6) months from and after the date and time as of which all but one of the units shall have been sold by Declarant to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the offending owner if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior thereto or subsequent thereto, and shall not bar or affect its enforcement.

17. Units Subject to Declaration, Bylaws, Rules and Regulations: All present and future owners, tenants and occupants of units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and any Rules and Regulations that may be adopted in accordance with the Bylaws or as said Declaration, Bylaws, Rules and Regulations may be amended from time to time. The acceptance of a deed of 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, Bylaws, 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 such provisions were made a part of each and every deed of conveyance or lease.

18. Amendment to Declaration: Except in cases of amendments that may be executed by a Declarant as set forth in General Statutes Section 47C-2-117(a), this Declaration may only be amended by the vote of at least sixty-seven percent (67%) in common interest of all unit owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No such amendment shall be effective until recorded in the Office of the Register of Deeds in each County in which the Property is located.

19. Invalidity: The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or 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 never had been included herein.

20. 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.

21. Captions: The captions herein are inserted only as a matter of convenience and for reference and such shall not be construed to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

22. Law Controlling: This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

EXHIBIT A TO DECLARATION  
DESCRIPTION OF LAND AND UNITS

Land:

Being all of Lot 2, as shown on plat recorded in Plat Book 77, at Page 46, Orange County Registry.

PIN 9880-25-7951

TM 7.17..10D

Units:

See as-built survey and condominium plats recorded in Plat Book \_\_\_\_\_, at Pages \_\_\_\_\_ through \_\_\_\_\_, Orange County Registry.



EXHIBIT BINITIAL UNDIVIDED INTEREST OF UNITS

<u>Unit No.</u>	<u>Square Footage</u>	<u>Votes</u>	<u>Interest in</u> <u>Common</u> <u>Elements</u>	<u>Limited</u> <u>Common</u> <u>Elements</u>
108	2068	13	12.95%	HVAC units
109	1716	11	10.75%	HVAC units
110	2252	14	14.09%	HVAC units
111	2125	13	13.30%	HVAC units
207	2241	14	14.03%	HVAC units
208	1777	11	11.14%	HVAC units
209	2070	13	12.96%	HVAC units
210	1722	11	10.78%	HVAC units
	15,989	100	100%	

EXHIBIT C

## BYLAWS OF

## TIMBERHILL II CONDOMINIUMS

## UNIT OWNERS ASSOCIATION, INC.

## ARTICLE I - PLAN OF UNIT OWNERSHIP

1. **Unit Ownership:** The Property described in the Declaration to which these Bylaws are attached, has been submitted to the provisions of Chapter 47C of the North Carolina General Statutes entitled "North Carolina Condominium Act" by the Declaration recorded in the Office of the Register of Deeds for each County in which said Property is located, simultaneously herewith, and such Property shall hereinafter be known as TimberHill II Condominiums.

2. **Applicability of Bylaws:** The provisions of these Bylaws are applicable to the Property of TimberHill II Condominiums and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the buildings and all other improvements thereon, including the units and the common elements owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are submitted to the provisions of said Chapter 47C of the North Carolina General Statutes, entitled "North Carolina Condominium Act."

3. **Application:** All present and future owners, mortgagees, lessees and occupants of Units and their employees, agents, guests and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and the Rules and Regulations made pursuant hereto and any amendment to these Bylaws upon the same being passed and duly set forth in an Amendment to the Bylaws duly recorded. The acceptance of a deed of conveyance

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