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BY: CAROLYN JOHNSON

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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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STATE OF NORTH CAROLINA

RESTATEMENT OF THE
DECLARATION OF CONDOMINIUM
COVIL GARDEN CONDOMINIUM

COUNTY OF NEW HANOVER

R.L. BLANTON & Co., Inc., a North Carolina Corporation, hereinafter called "DECLARANT", hereby re-submits the subject property described in Exhibit A to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act" and to that end does hereby publish and declare that all of the said property to be known as "COVIL GARDEN CONDOMINIUMS" is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following revised conditions, covenants, restrictions, uses, limitations and objections, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to Chapter 47C of the General Statutes of North Carolina known as the "North Carolina Condominium Act" and subject to the following easements, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and 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.

Some of the following Covenants are intended to insure ongoing compliance with North Carolina State Stormwater Management Permit as issued by the Division of Water Quality under NCAN 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit. The covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

To the extend any of the terms and provisions contained in the original Declaration, and all amendments or supplements thereto, conflict with the term herein, the terms of this instrument shall replace those in the original Declaration and amendments or supplements thereto. Unless expressly modified, supplemented or amended herein, the following amendments that have previously been recorded in the New Hanover County Registry are also incorporated herein by reference: Book 5798, Page 1212; Book 5803, Page 2344; Book 5817, Page 1313; Book 5873, Page 1723.

1. DEFINITIONS. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "North Carolina Condominium Act" means the statutory provisions set forth in Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses, late fees, fines or other owner charges which from time to time are assessed against the unit owner by the Association.

C. "Association" means COVIL GARDEN CONDO ASSOC., INC., the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the By-Laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "D" and made a part hereof by reference.

F. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in Section 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and

replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

I. "Common Profits" means the balance of all revenue of the Association remaining after deduction of common expenses.

J. "Condominium" means real estate, 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. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

K. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

L. "Declarant" means R.L. BLANTON & Co., Inc., their heirs, successors, and assigns.

M. "Declaration" means this instrument as it may be from time to time amended or supplemented.

N. "Development rights" means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.

O. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

P. "Limited Common Areas and Facilities" means and includes those common areas and facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

Q. "Mortgagee" shall mean a beneficiary or lender under a Mortgage or Deed of Trust.

R. "Plans" shall mean and refer to the plans and specifications of the condominium recorded under the name of the condominiums in the Unit Ownership file in the Office of the Register of Deeds of New Hanover County, in Condominium Map Book 18 at Page 234, revised in Condominium Map Book 18, Page 238; and Condominium Map Book 18, Page 247; Condominium Map Book 18, Page 264; revised in Condominium Map Book 18, Page 277; and Condominium Map Book 18, Page 307.

S. "Property" means and includes the land described in Section 2 of this Declaration together with any buildings and improvements located thereon.

T. "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration (Section 47C-2-109); to exercise any development right (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (Section 47C-2-115); to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (Section 47C-3-103(d)).

U. "Unit" or "Condominium Unit" means a part of the property which is to be subject to private ownership, as designated on the Exhibits attached to this Declaration and as further defined in the Act.

V. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a unit.

2. DESCRIPTION OF PROPERTY. All of that certain tract or parcel of land with the building and improvement thereon erected, or to be erected, situate, lying and being in the City of Wilmington, New Hanover County, State of North Carolina, and being more particularly described in Exhibit "A" attached hereto and incorporated by reference hereby as though fully incorporated herein.

Declarant submits the land described in Exhibit "A" attached hereto upon which Phases 1, 2 and 3 of COVIL GARDEN Condominiums are constructed. Phase 1 contains Building Two, 115 Covil Avenue. Phase 2 contains Building Three, 123 Covil Avenue. Phase 3 contains Building One, 119 Covil Avenue. The property hereby submitted is more particularly described by that Condominium Plats recorded in the New Hanover County Registry in Condominium Map Book 18 at Page 234, revised in Condominium Map Book 18, Page 238; and Condominium Map Book 18, Page 247; Condominium Map Book 18, Page 264; revised in Condominium Map Book 18, Page 277; and Condominium Map Book 18, Page 307. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "E" to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to Condominium ownership, the expansion will contain a maximum of thirty six (36) units including those in Phase 1. The Developer retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary condominium plats as required by law. Each such amendment to the Declaration shall be called a "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby; shall not require consent or ratification of any unit owner.

Further terms, conditions, liabilities, and rights concerning expansion into further phases of development, are to be found in Paragraph 34, Expansion of Condominium, of this Declaration.

3. DESCRIPTION OF BUILDING. The Declarant has constructed, or will construct, upon the property described in Exhibit "A" attached hereto, three (3) multi-unit buildings to be used for residential purposes as herein provided. All Phases contain the Buildings with addresses 115, 119 and 123 Covil Avenue, Wilmington, NC 28403. A plat or survey of the property showing the location of said building is attached hereto and made a part hereof as Exhibit "B". The building is more particularly described in the plans thereof, a copy of which plans are attached hereto as Exhibit "B" and made a part of hereof, showing all particulars of the building as required by law.

In general, the building will have three stories built on concrete raised slab foundation with wood framing and brick and hardi-plank exterior. The building will contain twelve units each with two bedrooms having approximately 900 to 1,000 total square feet of enclosed area. Each unit will contain three (2) bedrooms, two (2) bathrooms, a kitchen, a living/dining room area, a laundry room, a utility room and three closets.

In addition, the buildings will have 2 parking spaces per unit, handicapped parking spaces, bicycle parking spaces, walkways, stairs, landscape areas, and other appurtenances and facilities. All parking shall be only in parking spaces, and not in other parts of the streets and common areas.

4. UNIT DESIGNATION AND DESCRIPTION.

A. DESIGNATION. The unit designation of each unit, its location and dimensions, are shown on the recorded plats, made a part hereof. Each unit is identified by a street number a numeric designation (Ex.: 115-101 a first floor unit, 115-201 a second floor unit, 115-301 a third floor unit).

B. DESCRIPTION. The legal description of each unit shall consist of the street number, and a unit number which identifies such unit as shown on the said recorded plat incorporated herein by reference. Each unit is bounded both as to horizontal and vertical boundaries by the perimeter walls, floors and ceilings of the unit and the unfinished inner surfaces of closed windows and doors which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration. If walls, floors or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors, or ceilings are a part of the common elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other Fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element

allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. All components of individual unit air conditioning systems shall be part of that unit regardless of the physical location of said system or its components. All electrical and telephone lines, breakers, fuses and all other components desired or required to provide electrical and telephone service to a unit from the electric meter to the unit and from the telephone company service boxes to a unit are part of that unit that they serve.

The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be equal for all units. The percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in the common areas and facilities.

5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities generally shall mean and refer to all of the real property, described in Paragraph 2, and all of the improvements and facilities thereon which are not units, as defined hereinabove and in NCGS Chapter 47C, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

(1) All of the real property more particularly described in Paragraph 2 of this Declaration, including any and all retention/detention ponds located thereon.

(2) All foundations, columns, girders, beams, supports, roofs, roof or attic ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except non-load bearing partition walls wholly within a unit) of the buildings.

(3) All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

(4) All yard and garden areas, retention/detention ponds, all stormwater management facilities, parking and drive areas, sidewalks and walkways, and any other amenities.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provisions of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable TV and internet service, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units.

(6) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

(7) All hand-railings, except those on balconies serving only one Unit.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "C" and is attached hereto and made a part hereof.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are defined in NCGS Chapter 47C, and as follows:

A. Decks or balconies accessible only from a particular unit, and ground level, rear patios or dedicated patios adjacent to a single unit.

B. All doors, windows, glass in doors and windows, screens and vents extending into the unit from the perimeter walls, floors or ceilings thereof.

C. All ducts and related components and all water, cable television, electricity, plumbing, gas and sewage lines located outside the unit and serving only that unit; provided, however, that the portion of said lines located in a common compartment for the use of more than one unit shall be general common areas and facilities as described above. All such items located solely within the boundaries of a unit shall be part of that unit and the responsibility of the unit owner to maintain and replace.

E. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

F. Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

7. MEMBERSHIP and VOTING RIGHTS

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

B. The Association shall have two (2) classes of voting memberships

1. Class "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in the Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

2. Class "B". The Class B member shall be the Declarant and shall be entitled to four (4) votes for each unit owned. The Class B membership shall automatically terminate upon the happening of either of the two following events, which ever occurs earliest:

- (a) Upon the closing of the sale of seventy-five percent (75%) of all units in all sections, on both a by section basis and an overall basis in the development, or

(1) five years after the sale of the first unit, or December 1, 2018.

C. Notice and Quorum for Action. There shall be written notice of any meeting called for the purpose of taking any action authorized by this Declaration, which notice shall be sent to all members not less than fourteen (14) days no more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the meeting may be adjourned to a later date and the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Notwithstanding anything to the contrary, after control of the Association has been transferred from the Declarant to the Unit Owners the approval of at least two-thirds (2/3) of all Unit Owners is required to amend the Covenants or Mortgage, convey or encumber the Common Area.

8. USE.

A. Residential Use

The buildings and each of the units shall be used for residential purposes, which shall include the rental of any units by the owner(s) thereof for residential pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit; provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units; however, so long as the Declarant shall retain ownership of any units, it may it may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. The use by Declarant as such shall not be a violation of the use restrictions contained in the declaration, rules and regulations or other condominium documents. Declarant reserves the right to use any unsold unit for such purposes as its sole discretion, and to locate, or relocate, the units at will.

B. Property Rights

1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common areas which shall be appurtenant to and shall pass with the title to every Unit, and to their individual units subject to the following provisions:

- a. The right of the Declarant and/or HOA to limit the number of unrelated occupants of two bedroom units to four (4) people, or the maximum allowed by the ordinances of City of Wilmington, whichever is less; and
- b. The right to the Association to limit the number of guests of members;
- c. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against this Unit remains unpaid; and until such violation is cured for any infraction of its published rules and regulations;
- d. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed necessary by the Developer or agreed to by a two-thirds (2/3) majority of all the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members as defined hereinafter agreeing to such dedication or transfer has been recorded; however, until such time as the Declarant has conveyed the Common Areas to the Association, the Declarant may, in its sole discretion, dedicate or transfer Common Area for drainage and utility easements reasonably necessary for the continuing development of the