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Doc ID: 004463620015 Type: CRP  
Recorded: 07/17/2008 at 03:01:30 PM  
Fee Amt: \$56.00 Page 1 of 15  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK 3098 PG 877-891

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NORTH CAROLINA

ONslow COUNTY

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR STRAWBERRY FIELDS, PHASE II**

THIS DECLARATION is made this 9<sup>th</sup> day of May, 2008, by **STRAWBERRY FIELDS, LLC**, a North Carolina Limited Liability Company [formerly HARD -NETTELL DEVELOPMENT, LLC], hereinafter referred to as "**Declarant**" or "**Developer**", said terms being interchangeable as used herein.

Declarant is the owner of real property in Stump Sound Township, Onslow County, North Carolina [hereinafter referred to as the "Properties"] which is more particularly described as follows:

All of Lots \_\_\_\_\_ as depicted on plat of **STRAWBERRY FIELDS, PHASE II**, recorded in **Map Book** \_\_\_\_\_ at **page** \_\_\_\_\_ in the Office of the Register of Deeds of Onslow County.

The listed lots shall hereinafter be collectively referred to as **STRAWBERRY FIELDS, PHASE II**.

Declarant and Additional Owners hereby declare that all of the Properties above referred to shall be held and conveyed subject to the North Carolina Planned Community Act [North Carolina General Statutes Chapter 47F] (hereinafter referred to as the "Act"), and subject to the easements, restrictions, covenants and conditions set out in this declaration, which are imposed for the purpose of protecting the value, desirability and enjoyment of the properties. These easements, restrictions, covenants and conditions shall run with the title to the properties and be binding on all parties, their heirs successors and assigns, having any right, title or interest, legal or equitable, in the Properties or any part thereof, and these easements, restrictions, covenants and conditions shall inure to the benefit of each owner of the Properties or any part thereof.

**PART 1  
Definitions**

**Section 1.1** "**Association**" shall mean the Strawberry Fields Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, an owners

association organized for the mutual benefit and protection of the owners of the Properties. All owners of residential lots in STRAWBERRY FIELDS, PHASE II shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such residential lot.

**Section 1.2 “Additional Properties”** shall mean any lands adjoining the Properties or lands that are served by the roads and streets of STRAWBERRY FIELDS, PHASE II, which are now owned or acquired by the Declarant during the period of Declarant control. Said Additional Properties shall be added to and made a part of the Properties by the Declarant pursuant to Part 10 below. The addition of such Additional Properties shall become effective upon the recording by Declarant of a supplemental declaration for each additional property added.

**Section 1.3 “Board” or “Executive Board”** shall mean the body authorized to act on behalf of the Association.

**Section 1.4 “Owner”** shall mean the fee simple record owner, whether one or more persons or entities, of any lot which is a part of the Properties but not those having an interest held only as security for an obligation.

**Section 1.5 “Properties” or “Property”** shall mean all of the above-listed lots in STRAWBERRY FIELDS, PHASE II as shown upon the recorded plat referred to above, including all lots, roads and common areas shown on said plats.

**Section 1.6** [omitted]

**Section 1.7 “Common Areas” or “Common Elements”** shall mean all areas within the Properties which are designated or set aside for the common use and enjoyment of all of the Owners, and which are not designated for individual residential lot ownership, which Common Areas shall include all roads, ponds, ditches, buffer areas and other areas, if any, not included in individual lots. “Common Areas” shall also specifically include all private roads and easements necessary to provide access to the Property from the nearest public highway, whether or not such roads and easements are owned by Declarant and whether or not such roads and easements are shown on the above-referenced plat of the Property.

**Section 1.8 “Common Expense”** means the expenses or financial liabilities for the operation of the Association.

**Section 1.9 “Common Expense Liability”** means the liability for common expense allocated to each lot owner as permitted under the Act.

**Section 1.10 “Lot”** shall mean any of the above-listed lots shown on the recorded plat of the Properties or any Lots added pursuant to Part 10 below.

**Section 1.11 “Declarant”** shall be used interchangeably with “Developer” and shall refer to **STRAWBERRY FIELDS, LLC**, its successors and assigns, if such successors should own any of the Properties or Additional Properties.

**Section 1.12** “**Declaration**” shall mean this instrument, as it may from time to time be amended or supplemented.

**Section 1.13** “**Improvement**” shall mean any construction work done or placed on a Lot, any alteration of the physical appearance of a Lot, and any other physical treatment done on or applied to a Lot.

**Section 1.14** [omitted]

**Section 1.15** “**Membership**” shall mean the rights, privileges, benefits and obligations inuring to the benefit and burden of each Member of the Association by virtue of being an Owner of a Lot.

**Section 1.16** “**Member**” shall mean every person or other Owner who has a membership in the Association.

**Section 1.17** “**Planned Community**” shall mean the property and any common areas.

**Section 1.18** “**Property**” shall mean the listed Lots depicted on the above-referenced plat, together with any Lots added to the Planned Community pursuant to Part 10 below.

**Section 1.19** “**Special Declarant Rights**” means the rights reserved for the benefit of a Declarant to: (i) complete improvements indicated on the plat referred to herein; (ii) exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices and signs advertising the Planned Community; (iv) use easements through the common areas; (v) make the Planned Community subject to a Master Association; (vi) appoint or remove any officer or Executive Board Member of the Association or an Master Association during the Declarant Control Period; (vii) permit other land to be annexed to and made a part of the Planned Community in accordance with the terms of this Declaration.

## **PART 2 Property Rights**

**Section 2.1 Owners’ Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to all Common Areas and to the use of the streets and roads shown on Map Book 22 at Page 153, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, and which rights shall be subject to the following conditions:

- a. The Association shall have the right to suspend the voting rights of any Owner (1) during any period for which any portion of any assessment against such Owner’s lot remains unpaid, and (2) for a period not to exceed 60 days for any violation of the published rules of the Association.
- b. The Association shall have the right to impose on the Common Areas regulations for the use and enjoyment of such areas.

### **PART 3 Easements**

**Section 3.1** Declarant reserves to itself, its successors and assigns, a perpetual, nonexclusive, alienable and releasable easement and right, on, over and under the ground, with persons and equipment to erect, maintain, inspect, repair and use electric and telephone wires, cables and conduits, and sewers, water mains and other equipment used for the conveyance and use of electricity, telephone communications, gas service, sewer and water service, and other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the recorded plat of the Properties or of any Additional Properties referred to above.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such easements shall lie over, under and across the area lying within 10 feet of all front lot lines and within 5 feet of all side and rear lot lines.

These easements and rights further include the right to subject the Property to a contract with Jones-Onslow EMC or any other public utility, for the installation of underground electric cables and/or the installation of street lighting, either or both of which contracts may require an initial payment and/or a continuing monthly payment to Jones-Onslow EMC or other public utility, by the Owner of each Lot.

#### **Section 3.2. [omitted]**

**Section 3.3** An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon any portion of the Properties in the performance of their duties.

**Section 3.4** In case of any emergency or in case of any violation of these restrictions originating on, existing on or threatening any part of the Properties, regardless of whether any Lot Owner is present at the time of such emergency or violation, the Executive Board of the Association or any other person authorized by the Board shall have the right to enter any Lot for the purpose of (1) determining compliance with and enforcing these restrictions, (2) remedying or abating any nuisance or the cause of such emergency or violation, and (3) making any necessary repairs not performed by the Lot Owner. Such right of entry shall be immediate and shall not be deemed a trespass, and shall be without liability to the Association or its authorized representatives, except in cases of gross negligence.

**Section 3.5** All easements and rights described herein are easements appurtenant, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and on any Owner, purchaser, mortgagee or other person having an interest in the Properties, or any part of or interest therein, regardless of whether reference to said easements is made in any instruments of conveyance or evidence of obligation.

## **PART 4 Utilities**

**Section 4.1 Water Service.** Water service for STRAWBERRY FIELDS, PHASE II is initially provided by individual wells serving each lot. In the event water becomes available by the Onslow County Water department lot owners will be permitted to connect to County Water. The costs of connecting to the Onslow County Water System shall be paid by the individual owners of lots and not by developer.

**Section 4.2 Sewage Disposal.** Prior to the commencement of any construction of improvements on a lot, the Owner shall obtain a septic tank permit from Onslow County. Prior to the occupancy of any residence on a Lot, and prior to the use of any such system by the Owner, the Owner shall make proper and suitable provision for the disposal of sewage by installation of a septic tank system designed, located, constructed and maintained in accordance with the requirements, standards, recommendations and permits imposed, made or issued by the appropriate public health authorities.

**Section 4.2.1 Sewage Disposal Easements.** As to certain lots owned by Developer for which a septic tank permit is not obtainable due to the condition of the soils on the Lot, Developer reserves the right to provide a proper easement to each Lot owner for the use of a suitable off-site sewage disposal system area, together with an easement for pipes to convey sewage effluent from the Lot to the off-site area. The owner of each Lot requiring such off site sewage disposal easements shall be entitled to the use of such easement until such time as the Lot is connected to public sewer service. The costs and responsibility of maintaining such off-site sewage disposal systems shall be allocated as follows:

1. All parts of the sewage disposal system that are located on the Lot where the dwelling is located shall be the responsibility of the Lot owner;
2. All parts of the off site drain field serving an individual lot shall be the responsibility of the owner of the Lot served by such off site drain field, together with maintenance of the Lot on which such off site drain field is located. In the event that a Lot owner fails to properly maintain the off site area serving his Lot as provided in Section 9.3 below, then the Association shall have the rights and remedies set forth in that section.
3. All pipes connecting the Lot where the dwelling is located and the drain field serving said dwelling shall the responsibility of the Association.

In the event that public sewer service becomes available to a Lot which requires an off site wastewater disposal system, then the following shall apply:

1. If connection to the public system is mandatory, then the Lot Owner shall pay the costs of connecting to the system.
2. If connection to the public system is optional, then Developer shall have the option of having the Lot connected to the public system at Developer's cost.
3. If connection to the public system is optional and Developer elects not to have the Lot connected to the system, then the Lot owner, upon opting to connect to the system, shall be responsible for the costs of connection.

In any event, upon connection of a Lot to the public sewer system, the easements, if any, for the off site wastewater system for said Lot and the easement for the pipes

connecting the same to the Lot shall terminate. If the Lot(s) upon which a drain field or multiple drain fields are located [Drain Field Lots] are owned by the Association at the time of the termination of the wastewater system easements, then Declarant shall have the option to purchase any and all of said Drain Field Lots for the price of \$1,000 per lot (not per drain field).

## **PART 5 Homeowners' Association**

**Section 5.1 STRAWBERRY FIELDS OWNERS ASSOCIATION, INC.** is a nonprofit corporation formed by Developer pursuant to Article 3 of the Act to operate and maintain the common areas [including any roads or easements providing access to the Property from the Public Highway], to monitor compliance with and enforce these restrictions and to provide any other services and serve any other function provided for in this Declaration or approved by the members.

**Section 5.2** Every Owner of a lot in the Properties shall be a member of the Association, which Membership shall be appurtenant to and not severable from lot ownership.

**Section 5.3** Each Member of the Association shall be entitled to one vote in the business of the Association for each lot owned. When more than one person or entity holds title to a Lot, all of such Owners shall be Members, but entitled to only one vote, which shall be cast as provided in the bylaws.

## **PART 6 Management and Control of the Association**

**Section 6.1** Unless otherwise stated herein, the Association shall have all of the powers set forth in Article 3, Section 102 of the Act.

**Section 6.2** The business and responsibilities of the Association shall be managed by its Executive Board, which shall be selected and operate as provided in Article 3, Section 103 of the Act and as provided in the bylaws of the Association; **PROVIDED**, that all of the powers and duties of the Executive Board may be exercised by the Declarant or by an Executive Board appointed by Declarant until such time as (1) a number of Lots have been sold which is equal to 90% of the total of the lots collectively referred to in this Declaration as STRAWBERRY FIELDS, PHASE II plus any additional lots that are added pursuant to Part 10 below, have been sold and conveyed to persons other than Declarant or (2) until Declarant releases the right to exercise such powers and duties, whichever occurs first.

## **PART 7 Covenants for Assessments**

**Section 7.1 Lien and Personal Obligation for Assessments.** Declarant hereby imposes on each Lot within the Properties the obligation of each Lot Owner to pay to the Association the following (as determined or required by the Association):

- a. Annual Assessments or charges

- b. Special Assessments for capital improvements, to be established and collected as hereinafter provided
- c. Insurance assessments
- d. A pro rata share of any property taxes imposed on the Common Areas by any government taxing authority.
- e. Working Capital Assessments.

Such obligation shall apply to each lot of the Properties, and shall be deemed accepted by the purchaser of any Lot upon receipt and recording of the deed for the same.

The annual, special and insurance Assessments, together with any interest, collection costs and attorney's fees, shall be a continuing lien upon the Lot against which such Assessment is made, and the obligation to pay the same shall be the personal obligation of the person who was the Owner of the Lot at the time such Assessment became due. The personal obligation for the payment of delinquent Assessments shall not pass to subsequent Owners of the Lot, unless expressly assumed by such subsequent owner; but nothing herein shall prohibit the Association from seeking a judgment against the delinquent Owner, which shall be a lien upon any property in the name of the delinquent Owner.

**Section 7.2 Purpose of Assessments.** The Assessments imposed herein shall be used exclusively to promote the health, safety, welfare and enjoyment of the Owners of the Properties and for the improvement and maintenance of all easements, utilities, and Common Areas, including any roads and streets in or on the Properties. Specifically, Assessment funds may be used for any of the following purposes:

- a. Maintenance of and improvements to the Common Areas;
- b. Payment of the costs of maintaining the streets and easements providing access to the Property from the Public Highway, regardless of whether said roads or easements are shown on the plat referenced herein;
- c. Maintenance of and improvements to drainage and general utility easements and rights of way;
- d. Maintenance and repair of any sewer pipes connecting off site wastewater treatment facilities with the Lots served thereby; PROVIDED, however, that the portion of the annual assessment used for this purpose shall be assessed only against those Lots requiring the use of off site wastewater treatment facilities.
- e. Enforcement of these restrictions;
- f. Operating expenses of the Association;
- g. Any other action deemed by the Association to be necessary to promote the health, welfare and safety of the Owners or to increase the enjoyment of the Properties by the Owners, including the use of a property management company selected and approved by the Association.

**Section 7.3 Annual Assessments.**

- a. Except as provided herein for the initial year, Annual Assessments shall be in an amount to be fixed annually by the Executive Board, which may set different amounts of Assessments from year to year as it deems necessary to accomplish the purposes set out in Section 7.2 above.

b. The amount of the Assessment for the initial year of operation shall be \$180.00, exclusive of any amount added for purposes set forth in Section 7.2.d., and shall be due at the time of closing on each Lot purchase. Those Lots subject to the provisions of Section 7.2.d. shall be subject to an additional assessment, but the same shall not exceed the actual amount needed to cover actual expenditures for such purposes during the preceding year and expenses actually anticipated for such purposes during the following year.

c. The amount of the Assessment for each subsequent year shall be determined at least 30 days in advance of the beginning of the annual assessment period, which shall begin on January 1 of each year, and notice of the same shall be sent to each Owner of a Lot, together with the date on which payment of such assessment is due. The Executive Board shall have the authority to provide for the payment of assessments in monthly installments.

d. Adjustments in the amount of Annual Assessments shall be subject to the following limitations:

(1) Notwithstanding any other provision herein, the Executive Board may set an Annual Assessment amount of up to \$180.00 per year, plus an additional amount as specified in Section 7.3.b.

(2) The above amount may be exceeded if approved by a vote of (i) two-thirds [2/3rds] of the members voting in person or by proxy at a meeting called for such purpose or at an annual meeting for which such item has been placed on the agenda, or (ii) 3/4ths of the Directors voting in person or by proxy at a meeting called for such purpose.

**Section 7.4 Special Assessments for Capital Improvements.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment for that year, for the purpose of defraying all or a part of the costs of any construction, reconstruction, repair or replacement of a capital improvement on any Common Area, including any fixtures or personal property related thereto; provided, that any such assessment shall require the approval of two-thirds [2/3rds] of the members voting in person or by proxy at a meeting called for such purpose or at an annual meeting for which such item has been placed on the agenda.

**Section 7.5 Insurance.** The Association, as a part of the common expense, shall maintain insurance in amounts deemed by the Board to Directors to be reasonable and sufficient, to cover the following:

- (a) Risk of loss or damage to the Common Areas.
- (b) Public Liability Insurance for risks arising out of the use or condition of the Common Areas.
- (c) Liability of the Directors of the Association for actions taken as Directors.

Such insurance shall be for the benefit of the Association [and its Directors, in the case of Directors' Liability Insurance], and the proceeds shall be payable to the Association.



The Association shall have the sole right to settle any claims arising under such insurance.

**Section 7.6 [omitted]**

**Section 7.7 Notice and Quorum Requirements for Actions Taken Under Sections 7.3, 7.4 and 7.6.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3, 7.4 and 7.6, or any meeting at which such action is on the agenda, shall be sent to all Members not less than 30 days in advance of said meeting. At such meeting, the appearance in person or by proxy of 60% of the members entitled to vote on such issues shall constitute a quorum. If no quorum is attained at the first such meeting or any subsequent meeting scheduled for such purpose, the meeting shall be adjourned for a period of not more than 60 days, and the number required for a quorum at such subsequent meeting called for such purpose shall be one-half (1/2) of the number of members required for a quorum at the prior meeting.

**Section 7.8 Uniform Rate of Assessment.** Except as otherwise provided in Section 7.2.d. and 7.3.b., annual, special and insurance assessments shall be fixed at a uniform rate for all Lots, and provision may be made for the payment of the same on a monthly basis.

**Section 7.9 Time of Commencement of Assessments.** Assessments for each Lot shall go into effect on the date of acceptance of a deed for such Lot by a purchaser; provided, that Declarant shall not be required to pay annual assessments on unsold Lots owned by the Declarant; but, in lieu of assessments, Declarant shall pay a pro rata share of insurance assessments, utilities and ad valorem taxes on the Common Areas, based on the number of lots owned by Declarant on the first day of the assessment period.

**Section 7.10 Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within 30 days of the date on which the same is due shall bear interest at the rate at which interest accrues on an unpaid judgment. The lien shall arise as of the first day of the assessment period for which the lien is imposed, and shall, as of that date, constitute a lien for the improvement of real property. Except as otherwise provided in Article 3, Section 116 of the Act, such lien shall be enforceable through the provisions of Article 2A of Chapter 45 of the North Carolina General Statutes. The Association may also bring a legal action against the Owner personally obligated to pay the same and obtain a judgment for the amount of such assessment, and enforce said lien in any manner provided by law, including a judicial sale under Article 29B of Chapter 1 of the General Statutes. An Owner may not avoid liability for the assessment by non-use of his Lot or his non-use of any part of the Property.

**Section 7.11 Remedies and Requirements of the Association.** In addition to any other remedies provided herein, the Association shall have all of the remedies provided in Article 3, Section 116 of the Act for the collection of unpaid assessments, and the Association shall comply with the requirements of such provisions.

**Section 7.12 Subordination of Assessment Lien.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust. The sale or transfer of any lot by way of a deed or trust foreclosure shall extinguish the lien on the Lot to the extent of any payments which came due prior to the recording of such deed of

trust, but the lien for such payments shall attach to the proceeds of sale in priority immediately after the deed of trust being foreclosed.

**PART 8  
DUTIES AND RESPONSIBILITIES OF THE DECLARANT  
AND THE ASSOCIATION**

**Section 8.1 Reservation of Rights to the Developer.** The rights, powers and privileges reserved to the Declarant under this Part shall be in full force and continue until such time as (1) a number of Lots have been sold which is equal to 90% of the total of the lots collectively referred to in this Declaration as STRAWBERRY FIELDS, PHASE II plus any additional lots that are added pursuant to Part 10 below, have been sold and conveyed to persons other than Declarant or (2) until Declarant releases the right to exercise such powers and duties, whichever occurs first. The period until such time shall be called the "Developer Control Period".

**Section 8.2 Rights Reserved.** During the Developer Control Period, Declarant retains and shall have the following rights, powers and privileges which shall be in addition to any other rights reserved to the Declarant herein:

(a) The Association. All of the powers and duties of the Executive Board of the Association may be exercised by Declarant and Declarant shall be entitled to appoint all members of the Executive Board.

(b) Architectural Review Committee. All of the powers and duties of the ARC may be exercised by Declarant and Declarant shall be entitled to appoint all members of the ARC.

(c) Plan of Development. Declarant reserves the right to change the stated or planned use, configuration or designation of any of the lands in the planned community to which Declarant then owns title, including the right to replat lots to create more or fewer lots and to take such steps as are necessary as to cause such replatted lots to be suitable building lots, provided, that no such change shall be made if it would have an adverse effect on the value of the Lots previously sold by Declarant.

(d) Amendments by Declarant. The following amendments to this Declaration may be effected by the Declarant, during the period of Declarant control, or by the Executive Board of the Association thereafter, without the consent of the Members:

1. Any amendment deemed by Declarant to be reasonably necessary to further the overall plan of development for the Planned Community.
2. Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.
3. Amendments to conform to the requirements of any applicable law or governmental regulation or the rulings of any governmental agencies having jurisdiction; or, to qualify the Property or any Lots and improvements therein for mortgage or improvement loans made, insured or guaranteed by a government agency; or, to comply with the requirements of law or regulations of any quasi-governmental corporation or agency, upon a letter from any such corporation or agency requesting

- or suggesting that an amendment is necessary to comply with the requirements of such corporation or agency.
4. Amendments deemed necessary by Declarant to qualify the Property or any portion thereof for tax-exempt status.
  5. Amendments necessary to address any platting change of the Property as permitted herein.

(e) Right to Reject Amendments. Declarant shall have the right to veto, reject or refuse to comply with any amendment to the Declaration approved by the Members during the period of Declarant control.

### **Architectural Controls**

**Section 8.3 Architectural Review Committee.** All duties and responsibilities conferred upon the Architectural Review Committee [hereinafter the "ARC"] by this Declaration or the bylaws of the Association shall be exercised and performed by the Declarant or its designee during the Developer Control Period set out in Section 8.1. Thereafter, such shall be the responsibility of the Association's Executive Board, or a committee appointed by the Board.

**Section 8.4 Building and Site Improvements.** No structure shall be erected or commenced on any portion of the Properties, nor shall any change or alteration be made thereto, including painting or repainting of exterior surfaces, until the plans for the same shall have been submitted to and approved by the ARC.

### **Section 8.5. Approval of Plans.**

a. No plans will be approved if the proposed dwelling consists of less than 1200 square feet or if the proposed structure is not, in the opinion of the ARC, aesthetically in harmony with the other dwellings on the Properties or with the natural environment of the Property. No dwelling consisting in whole or in part of a single wide trailer, double wide trailer or any other structure initially requiring the issuance of a title certificate by the North Carolina DMV shall be allowed on any lot regardless of size.

b. Except as provided in this subparagraph, no specific setbacks or minimum building lines are established by this Declaration. All building location must comply with all rules imposed by Onslow County and with the guidelines referred to in Section 8.5.d(2), and all building location must be approved by the ARC.

c. The exterior of all dwellings must be completed within 12 months of the commencement of construction.

d. The following are the only structures allowed on a Lot:

- (1) One single family dwelling, not to exceed two stories in height, which must include a garage with capacity for at least one vehicle.
- (2) One or more accessory buildings, which may include a detached garage and guest facilities, but such accessory buildings must conform to the architecture of the main dwelling, and may not overcrowd the site or be used for commercial activities. Whether proposed accessory buildings 'overcrowd' the site is a determination to be made by the ARC.

e. All service utilities, fuel tanks, clothes lines and wood piles shall be enclosed in a wall or vegetative screen approved by the ARC such that the same are not visible from the street or from any other Lot in the Properties.

g. No fence shall be allowed in excess of 6 feet in height, and all fence types, materials and locations must be first approved by the ARC; provided, that all privacy fences shall be constructed of wood or vinyl, and all chain link fences must be black; no galvanized chain link fences will be allowed.

h. Each Lot owner must provide on the Lot off street parking for not less than two passenger automobiles prior to the occupation of the dwelling on the Lot. Parking areas and driveways shall be constructed of concrete, brick, asphalt, turfstone or other material approved by the ARC.

i. No swing sets or trampolines shall be placed or allowed to remain on any Lot unless the same are placed in the back yard.

#### **Maintenance of Roads, Easements and Common Areas**

**Section 8.6 Responsibility for Road Maintenance.** The roads and easements serving the Properties are currently owned by Declarant and others and are part of the Common Areas included in this Declaration. Notwithstanding such ownership, the Association shall be responsible for insuring that such roads and easements serving the Properties are properly maintained as private roads and easements. If the owners of the roads and easements offer to transfer ownership of the roads to the Association, then the Association shall accept such transfer of title. Nothing herein shall prevent the Association from taking the steps necessary to have the roads accepted as part of the system of roads maintained by the NCDOT, at which time the responsibilities of the Association for road maintenance shall terminate.

**Section 8.7. Maintenance of Common Areas.** The Association shall be responsible for maintaining, repairing and replacing any structures on or improvements to the Common Areas, including any utility and drainage easement areas, any sewer pipes connecting off site systems to the Lots served thereby, and any shrubbery, trees and other plants on the Common Areas.

The Association shall further have the right to effect any repairs or alterations to the stormwater drainage system on the Properties, including all pipes, ditches and ponds, and to enter upon any Lot to the extent reasonably necessary to carry out such repairs. By accepting title to a Lot, all Lot owners grant a right of entry to the Association for such purposes.

In the event that the need for any maintenance, repair or replacement is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which any Lots owned by such Owner are subject.

The Association shall maintain all common areas and shall pay all premiums associated with general liability insurance insuring against liability arising from the ownership and operation of such common areas.

## **PART 9 Use Restrictions**

**Section 9.1 Land Use and Building Type.** No Lot in STRAWBERRY FIELDS, PHASE II shall be used for any purposes other than residential uses and uses incident thereto, which shall not include any commercial uses or other uses designed to generate income. All Lots are restricted to single family dwellings.

**Section 9.2 Nuisances.** No noxious or offensive activities shall be carried on upon any Lot, nor shall any activity be engaged in which would become an annoyance or nuisance to the residents of the Lots in the Property. "Noxious" or "offensive" shall mean any activity, visual impression, odor or noise which appreciably interferes with the quiet and undisturbed use of his or her property by any Lot owner or lawful occupant of any Lot. The ARC shall, in the event that a question arises, become the arbiter of what constitutes a nuisance.

**Section 9.3 Maintenance of Lots.** In the event that any Lot Owner fails or refuses to keep the Lot premises free from weeds, underbrush, refuse piles, or other unsightly growth or objects, then, after 30 days notice from the ARC, the Association or its designee shall be entitled to enter upon such lands and remove the same at the expense of the Owner, and such entry shall not be a trespass. The costs incurred by the Association for such removal shall be a lien on such Lot, and such amount, together with any collection costs shall be due and payable 30 days after the Owner is sent a bill therefore. In the event of the failure of the Owner to pay such amount within 30 days of being billed for the same, the lien for such amount shall be enforceable by legal proceedings in the same manner as provided in Section 7.10.

**Section 9.4 No Temporary Structures.** No structure of a temporary nature and no trailer, tent, shack, garage barn or other outbuilding shall be used on any Lot at any time as a dwelling or residence, either permanently or temporarily.

**Section 9.5 Parking of Vehicles and Recreational Vehicles.** No boat, motor boat, trailer, motor home or mobile home or similar type vehicle may be kept, stored or placed on any Lot, except that boats no more than 25 feet, trailers (excluding "single-wide or fixed trailers) and motor homes are permitted if placed in an area of the Lot between back line of the Lot and the back of the dwelling house. No motor vehicle shall be kept, stored or placed outside of a building on any Lot unless the same is properly registered with and licensed by the North Carolina Division of Motor Vehicles, and in operating condition.

**Section 9.6 Animals.** No animals kept for resale or breeding shall be kept or maintained on any lot or in any residence on the property. No animals posing a danger to any other owners shall be kept or maintained on any lot or in any residence on the property.

Household pets may be kept provided that their boarding does not create levels of noise or odor which interfere with the rights of other Owners to the undisturbed use and possession of their properties.

All animals must be properly penned, and not allowed to roam or run free on areas of the Property other than the Lot owned by the animal's owner.

**Section 9.7 Signs.** All signs shall be subject to the approval of the ARC, but the use of "For Sale" signs shall not be denied if in compliance with applicable laws and if properly maintained.

**Section 9.8 Alterations to Common Areas.** Only the Association may make or authorize alterations to any Common Areas.

**Section 9.9 Restrictions On Further Subdividing.** The subdividing of lots is not allowed without the approval of the Declarant, during the period of Declarant control [Section 8.1], or the Association thereafter, except that Declarant may reconfigure unsold lots. For purposes of this provision "subdivide" or "subdividing" shall include any process whereby the size or configuration of a lot is altered or the number of lots is changed.

## **PART 10 Addition of Properties**

**10.1 Vote Required.** Except as provided below, the addition of property to this Declaration shall require the assent of two-third (2/3rds) of the members of the Association at a meeting called for this purpose, or an annual meeting for which such matter has been placed on the agenda, notice of such in either case to be given at least 30 but not more than 60 days prior to the meeting.

**10.2 Declarant may add properties.** If the Declarant or its successors or assigns shall develop any Additional Property as defined herein, such property or any portion thereof may be added to the Properties included in this Declaration without assent of the Association or its members. Addition of Properties by this section shall become effective upon the filing by Declarant of a supplemental or amended Declaration in the Onslow County Register of Deeds Office.

**10.3 Use Restrictions on Additional Properties.** Nothing herein shall prevent Declarant from imposing different use restrictions or architectural controls on any Additional Properties; **provided**, that no dwellings of less than 1500 square feet shall be allowed on any additional properties, and no other restrictions or architectural controls shall be imposed on any additional properties which would adversely affect the values of the other Properties subject to these restrictions.

## **PART 11 General Provisions**

**11.1** The Association or any Owner who is a member in good standing shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, charges and other obligations now or hereafter imposed by the provisions of this Declaration. Failure of the Association or its Owner-Members to enforce an provision contained herein shall not be deemed a waiver or such provision or the right to enforce the same thereafter.

**11.2 Stormwater Runoff Enforcement.** The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce any stormwater runoff regulations which may apply.

**11.3 Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order or otherwise shall not affect any other provisions, which shall remain in effect as written.

**11.4 Lots Subject to Declaration.** All present and future owners, tenants and occupants of Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of this Declaration, as it may be amended from time to time as provided herein. Acceptance of a deed or lease, or entering into possession of a Lot shall constitute acceptance of a ratification of the validity of all of the provisions set for the herein. The provisions of this Declaration be binding and shall inure to the benefit of an by enforceable by the Association or any Owner, or their heirs, successors or assigns for a period of 20 years form the date of recording of this Declaration. After the end of the 20 year period, this Declaration shall automatically renew for successive periods of 10 years each unless modified or terminated by a two-thirds (2/3rds) vote of the Association as provided in Section 12.5 below.

**11.5 Amendment of Declaration.** Except as otherwise provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by and as provided in an instrument duly recorded in Onslow County executed by the officers of the Association, reflecting action by a two-thirds (2/3rds) vote of the Members; provided, that no amendment shall be valid if contrary to law or if the same purports to limit or negate the rights of the Declarant as provided herein.

IN WITNESS WHEREOF, Declarant and Additional Owners have executed this instrument or caused this instrument to be executed in their names by their authorized officials as of the date written above.

**STRAWBERRY FIELDS, LLC**

By: *Henry Heil*  
Manager

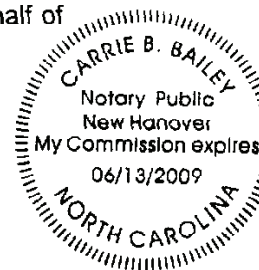
NORTH CAROLINA  
ONslow COUNTY

I, the undersigned Notary Public, do hereby certify that Henry Heil appeared before me this day and acknowledged that he is Manager of **STRAWBERRY FIELDS, LLC**, a North Carolina Limited Liability Company, and that he, as Manager, being authorized to do so, executed the foregoing Declaration on behalf of the Company.

WITNESS my hand and notarial seal this 9<sup>th</sup> day of May, 2008.

My Commission expires: 06/13/2009

*Carrie B. Bailey*  
Notary Public





Doc ID: 004463620015 Type: CRP  
Recorded: 07/17/2008 at 03:01:30 PM  
Fee Amt: \$56.00 Page 1 of 15  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK **3098** PG **877-891**



Doc ID: 006896250016 Type: CRP  
Recorded: 08/29/2008 at 02:36:04 PM  
Fee Amt: \$59.00 Page 1 of 16  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK **3120** PG **1-16**

PREPARED BY CHARLES T. BUSBY, P.O. BOX 818, HAMPSTEAD, N.C. 28443

NORTH CAROLINA

ONslow COUNTY

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR STRAWBERRY FIELDS, PHASE II**

THIS DECLARATION is made this 9<sup>th</sup> day of May, 2008, by **STRAWBERRY FIELDS, LLC**, a North Carolina Limited Liability Company [formerly **HARD -NETTELL DEVELOPMENT, LLC**], hereinafter referred to as "**Declarant**" or "**Developer**", said terms being interchangeable as used herein.

Declarant is the owner of real property in Stump Sound Township, Onslow County, North Carolina [hereinafter referred to as the "Properties"] which is more particularly described as follows:

All of Lots 1-6 as depicted on plat of **STRAWBERRY FIELDS, PHASE II**, recorded in **Map Book 56** at page 20 in the Office of the Register of Deeds of Onslow County.

The listed lots shall hereinafter be collectively referred to as **STRAWBERRY FIELDS, PHASE II**.

Declarant and Additional Owners hereby declare that all of the Properties above referred to shall be held and conveyed subject to the North Carolina Planned Community Act [North Carolina General Statutes Chapter 47F] (hereinafter referred to as the "Act"), and subject to the easements, restrictions, covenants and conditions set out in this declaration, which are imposed for the purpose of protecting the value, desirability and enjoyment of the properties. These easements, restrictions, covenants and conditions shall run with the title to the properties and be binding on all parties, their heirs successors and assigns, having any right, title or interest, legal or equitable, in the Properties or any part thereof, and these easements, restrictions, covenants and conditions shall inure to the benefit of each owner of the Properties or any part thereof.

**PART 1  
Definitions**

**Section 1.1 "Association"** shall mean the Strawberry Fields Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, an owners



association organized for the mutual benefit and protection of the owners of the Properties. All owners of residential lots in STRAWBERRY FIELDS, PHASE II shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such residential lot.

**Section 1.2 “Additional Properties”** shall mean any lands adjoining the Properties or lands that are served by the roads and streets of STRAWBERRY FIELDS, PHASE II, which are now owned or acquired by the by Declarant during the period of Declarant control. Said Additional Properties shall be added to and made a part of the Properties by the Declarant pursuant to Part 10 below. The addition of such Additional Properties shall become effective upon the recording by Declarant of a supplemental declaration for each additional property added.

**Section 1.3 “Board” or “Executive Board”** shall mean the body authorized to act on behalf of the Association.

**Section 1.4 “Owner”** shall mean the fee simple record owner, whether one or more persons or entities, of any lot which is a part of the Properties but not those having an interest held only as security for an obligation.

**Section 1.5 “Properties” or “Property”** shall mean all of the above-listed lots in STRAWBERRY FIELDS, PHASE II as shown upon the recorded plat referred to above, including all lots, roads and common areas shown on said plats.

**Section 1.6 [omitted]**

**Section 1.7 “Common Areas” or “Common Elements”** shall mean all areas within the Properties which are designated or set aside for the common use and enjoyment of all of the Owners, and which are not designated for individual residential lot ownership, which Common Areas shall include all roads, ponds, ditches, buffer areas and other areas, if any, not included in individual lots. “Common Areas” shall also specifically include all private roads and easements necessary to provide access to the Property from the nearest public highway, whether or not such roads and easements are owned by Declarant and whether or not such roads and easements are shown on the above-referenced plat of the Property.

**Section 1.8 “Common Expense”** means the expenses or financial liabilities for the operation of the Association.

**Section 1.9 “Common Expense Liability”** means the liability for common expense allocated to each lot owner as permitted under the Act.

**Section 1.10 “Lot”** shall mean any of the above-listed lots shown on the recorded plat of the Properties or any Lots added pursuant to Part 10 below.

**Section 1.11 “Declarant”** shall be used interchangeably with “Developer” and shall refer to **STRAWBERRY FIELDS, LLC**, its successors and assigns, if such successors should own any of the Properties or Additional Properties.

**Section 1.12 “Declaration”** shall mean this instrument, as it may from time to time be amended or supplemented.

**Section 1.13 “Improvement”** shall mean any construction work done or placed on a Lot, any alteration of the physical appearance of a Lot, and any other physical treatment done on or applied to a Lot.

**Section 1.14 [omitted]**

**Section 1.15 “Membership”** shall mean the rights, privileges, benefits and obligations inuring to the benefit and burden of each Member of the Association by virtue of being an Owner of a Lot.

**Section 1.16 “Member”** shall mean every person or other Owner who has a membership in the Association.

**Section 1.17 “Planned Community”** shall mean the property and any common areas.

**Section 1.18 “Property”** shall mean the listed Lots depicted on the above-referenced plat, together with any Lots added to the Planned Community pursuant to Part 10 below.

**Section 1.19 “Special Declarant Rights”** means the rights reserved for the benefit of a Declarant to: (i) complete improvements indicated on the plat referred to herein; (ii) exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices and signs advertising the Planned Community; (iv) use easements through the common areas; (v) make the Planned Community subject to a Master Association; (vi) appoint or remove any officer or Executive Board Member of the Association or an Master Association during the Declarant Control Period; (vii) permit other land to be annexed to and made a part of the Planned Community in accordance with the terms of this Declaration.

## **PART 2 Property Rights**

**Section 2.1 Owners’ Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to all Common Areas and to the use of the streets and roads shown on Map Book 22 at Page 153, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, and which rights shall be subject to the following conditions:

- a. The Association shall have the right to suspend the voting rights of any Owner (1) during any period for which any portion of any assessment against such Owner’s lot remains unpaid, and (2) for a period not to exceed 60 days for any violation of the published rules of the Association.
- b. The Association shall have the right to impose on the Common Areas regulations for the use and enjoyment of such areas.

### **PART 3 Easements**

**Section 3.1** Declarant reserves to itself, its successors and assigns, a perpetual, nonexclusive, alienable and releasable easement and right, on, over and under the ground, with persons and equipment to erect, maintain, inspect, repair and use electric and telephone wires, cables and conduits, and sewers, water mains and other equipment used for the conveyance and use of electricity, telephone communications, gas service, sewer and water service, and other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the recorded plat of the Properties or of any Additional Properties referred to above.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such easements shall lie over, under and across the area lying within 10 feet of all front lot lines and within 5 feet of all side and rear lot lines.

These easements and rights further include the right to subject the Property to a contract with Jones-Onslow EMC or any other public utility, for the installation of underground electric cables and/or the installation of street lighting, either or both of which contracts may require an initial payment and/or a continuing monthly payment to Jones-Onslow EMC or other public utility, by the Owner of each Lot.

#### **Section 3.2. [omitted]**

**Section 3.3** An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon any portion of the Properties in the performance of their duties.

**Section 3.4** In case of any emergency or in case of any violation of these restrictions originating on, existing on or threatening any part of the Properties, regardless of whether any Lot Owner is present at the time of such emergency or violation, the Executive Board of the Association or any other person authorized by the Board shall have the right to enter any Lot for the purpose of (1) determining compliance with and enforcing these restrictions, (2) remedying or abating any nuisance or the cause of such emergency or violation, and (3) making any necessary repairs not performed by the Lot Owner. Such right of entry shall be immediate and shall not be deemed a trespass, and shall be without liability to the Association or its authorized representatives, except in cases of gross negligence.

**Section 3.5** All easements and rights described herein are easements appurtenant, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and on any Owner, purchaser, mortgagee or other person having an interest in the Properties, or any part of or interest therein, regardless of whether reference to said easements is made in any instruments of conveyance or evidence of obligation.

## **PART 4 Utilities**

**Section 4.1 Water Service.** Water service for STRAWBERRY FIELDS, PHASE II is initially provided by individual wells serving each lot. In the event water becomes available by the Onslow County Water department lot owners will be permitted to connect to County Water. The costs of connecting to the Onslow County Water System shall be paid by the individual owners of lots and not by developer.

**Section 4.2 Sewage Disposal.** Prior to the commencement of any construction of improvements on a lot, the Owner shall obtain a septic tank permit from Onslow County. Prior to the occupancy of any residence on a Lot, and prior to the use of any such system by the Owner, the Owner shall make proper and suitable provision for the disposal of sewage by installation of a septic tank system designed, located, constructed and maintained in accordance with the requirements, standards, recommendations and permits imposed, made or issued by the appropriate public health authorities.

**Section 4.2.1 Sewage Disposal Easements.** As to certain lots owned by Developer for which a septic tank permit is not obtainable due to the condition of the soils on the Lot, Developer reserves the right to provide a proper easement to each Lot owner for the use of a suitable off-site sewage disposal system area, together with an easement for pipes to convey sewage effluent from the Lot to the off-site area. The owner of each Lot requiring such off site sewage disposal easements shall be entitled to the use of such easement until such time as the Lot is connected to public sewer service. The costs and responsibility of maintaining such off-site sewage disposal systems shall be allocated as follows:

1. All parts of the sewage disposal system that are located on the Lot where the dwelling is located shall be the responsibility of the Lot owner;
2. All parts of the off site drain field serving an individual lot shall be the responsibility of the owner of the Lot served by such off site drain field, together with maintenance of the Lot on which such off site drain field is located. In the event that a Lot owner fails to properly maintain the off site area serving his Lot as provided in Section 9.3 below, then the Association shall have the rights and remedies set forth in that section.
3. All pipes connecting the Lot where the dwelling is located and the drain field serving said dwelling shall the responsibility of the Association.

In the event that public sewer service becomes available to a Lot which requires an off site wastewater disposal system, then the following shall apply:

1. If connection to the public system is mandatory, then the Lot Owner shall pay the costs of connecting to the system.
2. If connection to the public system is optional, then Developer shall have the option of having the Lot connected to the public system at Developer's cost.
3. If connection to the public system is optional and Developer elects not to have the Lot connected to the system, then the Lot owner, upon opting to connect to the system, shall be responsible for the costs of connection.

In any event, upon connection of a Lot to the public sewer system, the easements, if any, for the off site wastewater system for said Lot and the easement for the pipes

connecting the same to the Lot shall terminate. If the Lot(s) upon which a drain field or multiple drain fields are located [Drain Field Lots] are owned by the Association at the time of the termination of the wastewater system easements, then Declarant shall have the option to purchase any and all of said Drain Field Lots for the price of \$1,000 per lot (not per drain field).

## **PART 5 Homeowners' Association**

**Section 5.1 STRAWBERRY FIELDS OWNERS ASSOCIATION, INC.** is a nonprofit corporation formed by Developer pursuant to Article 3 of the Act to operate and maintain the common areas [including any roads or easements providing access to the Property from the Public Highway], to monitor compliance with and enforce these restrictions and to provide any other services and serve any other function provided for in this Declaration or approved by the members.

**Section 5.2** Every Owner of a lot in the Properties shall be a member of the Association, which Membership shall be appurtenant to and not severable from lot ownership.

**Section 5.3** Each Member of the Association shall be entitled to one vote in the business of the Association for each lot owned. When more than one person or entity holds title to a Lot, all of such Owners shall be Members, but entitled to only one vote, which shall be cast as provided in the bylaws.

## **PART 6 Management and Control of the Association**

**Section 6.1** Unless otherwise stated herein, the Association shall have all of the powers set forth in Article 3, Section 102 of the Act.

**Section 6.2** The business and responsibilities of the Association shall be managed by its Executive Board, which shall be selected and operate as provided in Article 3, Section 103 of the Act and as provided in the bylaws of the Association; **PROVIDED**, that all of the powers and duties of the Executive Board may be exercised by the Declarant or by an Executive Board appointed by Declarant until such time as (1) a number of Lots have been sold which is equal to 90% of the total of the lots collectively referred to in this Declaration as STRAWBERRY FIELDS, PHASE II plus any additional lots that are added pursuant to Part 10 below, have been sold and conveyed to persons other than Declarant or (2) until Declarant releases the right to exercise such powers and duties, whichever occurs first.

## **PART 7 Covenants for Assessments**

**Section 7.1 Lien and Personal Obligation for Assessments.** Declarant hereby imposes on each Lot within the Properties the obligation of each Lot Owner to pay to the Association the following (as determined or required by the Association):

- a. Annual Assessments or charges

- b. Special Assessments for capital improvements, to be established and collected as hereinafter provided
- c. Insurance assessments
- d. A pro rata share of any property taxes imposed on the Common Areas by any government taxing authority.
- e. Working Capital Assessments.

Such obligation shall apply to each lot of the Properties, and shall be deemed accepted by the purchaser of any Lot upon receipt and recording of the deed for the same.

The annual, special and insurance Assessments, together with any interest, collection costs and attorney's fees, shall be a continuing lien upon the Lot against which such Assessment is made, and the obligation to pay the same shall be the personal obligation of the person who was the Owner of the Lot at the time such Assessment became due. The personal obligation for the payment of delinquent Assessments shall not pass to subsequent Owners of the Lot, unless expressly assumed by such subsequent owner; but nothing herein shall prohibit the Association from seeking a judgment against the delinquent Owner, which shall be a lien upon any property in the name of the delinquent Owner.

**Section 7.2 Purpose of Assessments.** The Assessments imposed herein shall be used exclusively to promote the health, safety, welfare and enjoyment of the Owners of the Properties and for the improvement and maintenance of all easements, utilities, and Common Areas, including any roads and streets in or on the Properties. Specifically, Assessment funds may be used for any of the following purposes:

- a. Maintenance of and improvements to the Common Areas;
- b. Payment of the costs of maintaining the streets and easements providing access to the Property from the Public Highway, regardless of whether said roads or easements are shown on the plat referenced herein;
- c. Maintenance of and improvements to drainage and general utility easements and rights of way;
- d. Maintenance and repair of any sewer pipes connecting off site wastewater treatment facilities with the Lots served thereby; PROVIDED, however, that the portion of the annual assessment used for this purpose shall be assessed only against those Lots requiring the use of off site wastewater treatment facilities.
- e. Enforcement of these restrictions;
- f. Operating expenses of the Association;
- g. Any other action deemed by the Association to be necessary to promote the health, welfare and safety of the Owners or to increase the enjoyment of the Properties by the Owners, including the use of a property management company selected and approved by the Association.

**Section 7.3 Annual Assessments.**

- a. Except as provided herein for the initial year, Annual Assessments shall be in an amount to be fixed annually by the Executive Board, which may set different amounts of Assessments from year to year as it deems necessary to accomplish the purposes set out in Section 7.2 above.

b. The amount of the Assessment for the initial year of operation shall be \$180.00, exclusive of any amount added for purposes set forth in Section 7.2.d., and shall be due at the time of closing on each Lot purchase. Those Lots subject to the provisions of Section 7.2.d. shall be subject to an additional assessment, but the same shall not exceed the actual amount needed to cover actual expenditures for such purposes during the preceding year and expenses actually anticipated for such purposes during the following year.

c. The amount of the Assessment for each subsequent year shall be determined at least 30 days in advance of the beginning of the annual assessment period, which shall begin on January 1 of each year, and notice of the same shall be sent to each Owner of a Lot, together with the date on which payment of such assessment is due. The Executive Board shall have the authority to provide for the payment of assessments in monthly installments.

d. Adjustments in the amount of Annual Assessments shall be subject to the following limitations:

(1) Notwithstanding any other provision herein, the Executive Board may set an Annual Assessment amount of up to \$180.00 per year, plus an additional amount as specified in Section 7.3.b.

(2) The above amount may be exceeded if approved by a vote of (i) two-thirds [2/3rds] of the members voting in person or by proxy at a meeting called for such purpose or at an annual meeting for which such item has been placed on the agenda, or (ii) 3/4ths of the Directors voting in person or by proxy at a meeting called for such purpose.

**Section 7.4 Special Assessments for Capital Improvements.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment for that year, for the purpose of defraying all or a part of the costs of any construction, reconstruction, repair or replacement of a capital improvement on any Common Area, including any fixtures or personal property related thereto; provided, that any such assessment shall require the approval of two-thirds [2/3rds] of the members voting in person or by proxy at a meeting called for such purpose or at an annual meeting for which such item has been placed on the agenda.

**Section 7.5 Insurance.** The Association, as a part of the common expense, shall maintain insurance in amounts deemed by the Board to Directors to be reasonable and sufficient, to cover the following:

- (a) Risk of loss or damage to the Common Areas.
- (b) Public Liability Insurance for risks arising out of the use or condition of the Common Areas.
- (c) Liability of the Directors of the Association for actions taken as Directors.

Such insurance shall be for the benefit of the Association [and its Directors, in the case of Directors' Liability Insurance], and the proceeds shall be payable to the Association.

The Association shall have the sole right to settle any claims arising under such insurance.

**Section 7.6 [omitted]**

**Section 7.7 Notice and Quorum Requirements for Actions Taken Under Sections 7.3, 7.4 and 7.6.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3, 7.4 and 7.6, or any meeting at which such action is on the agenda, shall be sent to all Members not less than 30 days in advance of said meeting. At such meeting, the appearance in person or by proxy of 60% of the members entitled to vote on such issues shall constitute a quorum. If no quorum is attained at the first such meeting or any subsequent meeting scheduled for such purpose, the meeting shall be adjourned for a period of not more than 60 days, and the number required for a quorum at such subsequent meeting called for such purpose shall be one-half (1/2) of the number of members required for a quorum at the prior meeting.

**Section 7.8 Uniform Rate of Assessment.** Except as otherwise provided in Section 7.2.d. and 7.3.b., annual, special and insurance assessments shall be fixed at a uniform rate for all Lots, and provision may be made for the payment of the same on a monthly basis.

**Section 7.9 Time of Commencement of Assessments.** Assessments for each Lot shall go into effect on the date of acceptance of a deed for such Lot by a purchaser; provided, that Declarant shall not be required to pay annual assessments on unsold Lots owned by the Declarant; but, in lieu of assessments, Declarant shall pay a pro rata share of insurance assessments, utilities and ad valorem taxes on the Common Areas, based on the number of lots owned by Declarant on the first day of the assessment period.

**Section 7.10 Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within 30 days of the date on which the same is due shall bear interest at the rate at which interest accrues on an unpaid judgment. The lien shall arise as of the first day of the assessment period for which the lien is imposed, and shall, as of that date, constitute a lien for the improvement of real property. Except as otherwise provided in Article 3, Section 116 of the Act, such lien shall be enforceable through the provisions of Article 2A of Chapter 45 of the North Carolina General Statutes. The Association may also bring a legal action against the Owner personally obligated to pay the same and obtain a judgment for the amount of such assessment, and enforce said lien in any manner provided by law, including a judicial sale under Article 29B of Chapter 1 of the General Statutes. An Owner may not avoid liability for the assessment by non-use of his Lot or his non-use of any part of the Property.

**Section 7.11 Remedies and Requirements of the Association.** In addition to any other remedies provided herein, the Association shall have all of the remedies provided in Article 3, Section 116 of the Act for the collection of unpaid assessments, and the Association shall comply with the requirements of such provisions.

**Section 7.12 Subordination of Assessment Lien.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust. The sale or transfer of any lot by way of a deed or trust foreclosure shall extinguish the lien on the Lot to the extent of any payments which came due prior to the recording of such deed of



trust, but the lien for such payments shall attach to the proceeds of sale in priority immediately after the deed of trust being foreclosed.

**PART 8  
DUTIES AND RESPONSIBILITIES OF THE DECLARANT  
AND THE ASSOCIATION**

**Section 8.1 Reservation of Rights to the Developer.** The rights, powers and privileges reserved to the Declarant under this Part shall be in full force and continue until such time as (1) a number of Lots have been sold which is equal to 90% of the total of the lots collectively referred to in this Declaration as STRAWBERRY FIELDS, PHASE II plus any additional lots that are added pursuant to Part 10 below, have been sold and conveyed to persons other than Declarant or (2) until Declarant releases the right to exercise such powers and duties, whichever occurs first. The period until such time shall be called the "Developer Control Period".

**Section 8.2 Rights Reserved.** During the Developer Control Period, Declarant retains and shall have the following rights, powers and privileges which shall be in addition to any other rights reserved to the Declarant herein:

(a) The Association. All of the powers and duties of the Executive Board of the Association may be exercised by Declarant and Declarant shall be entitled to appoint all members of the Executive Board.

(b) Architectural Review Committee. All of the powers and duties of the ARC may be exercised by Declarant and Declarant shall be entitled to appoint all members of the ARC.

(c) Plan of Development. Declarant reserves the right to change the stated or planned use, configuration or designation of any of the lands in the planned community to which Declarant then owns title, including the right to replat lots to create more or fewer lots and to take such steps as are necessary as to cause such replatted lots to be suitable building lots, provided, that no such change shall be made if it would an adverse effect on the value of the Lots previously sold by Declarant.

(d) Amendments by Declarant. The following amendments to this Declaration may be effected by the Declarant, during the period of Declarant control, or by the Executive Board of the Association thereafter, without the consent of the Members:

1. Any amendment deemed by Declarant to be reasonably necessary to further the overall plan of development for the Planned Community.
2. Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.
3. Amendments to conform to the requirements of any applicable law or governmental regulation or the rulings of any governmental agencies having jurisdiction; or, to qualify the Property or any Lots and improvements therein for mortgage or improvement loans made, insured or guaranteed by a government agency; or, to comply with the requirements of law or regulations of any quasi-governmental corporation or agency, upon a letter from any such corporation or agency requesting

- or suggesting that an amendment is necessary to comply with the requirements of such corporation or agency.
4. Amendments deemed necessary by Declarant to qualify the Property or any portion thereof for tax-exempt status.
  5. Amendments necessary to address any platting change of the Property as permitted herein.

(e) Right to Reject Amendments. Declarant shall have the right to veto, reject or refuse to comply with any amendment to the Declaration approved by the Members during the period of Declarant control.

### **Architectural Controls**

**Section 8.3 Architectural Review Committee.** All duties and responsibilities conferred upon the Architectural Review Committee [hereinafter the "ARC"] by this Declaration or the bylaws of the Association shall be exercised and performed by the Declarant or its designee during the Developer Control Period set out in Section 8.1. Thereafter, such shall be the responsibility of the Association's Executive Board, or a committee appointed by the Board.

**Section 8.4 Building and Site Improvements.** No structure shall be erected or commenced on any portion of the Properties, nor shall any change or alteration be made thereto, including painting or repainting of exterior surfaces, until the plans for the same shall have been submitted to and approved by the ARC.

### **Section 8.5. Approval of Plans.**

- a. No plans will be approved if the proposed dwelling consists of less than 1200 square feet or if the proposed structure is not, in the opinion of the ARC, aesthetically in harmony with the other dwellings on the Properties or with the natural environment of the Property. No dwelling consisting in whole or in part of a single wide trailer, double wide trailer or any other structure initially requiring the issuance of a title certificate by the North Carolina DMV shall be allowed on any lot regardless of size.
- b. Except as provided in this subparagraph, no specific setbacks or minimum building lines are established by this Declaration. All building location must comply with all rules imposed by Onslow County and with the guidelines referred to in Section 8.5.d(2), and all building location must be approved by the ARC.
- c. The exterior of all dwellings must be completed within 12 months of the commencement of construction.
- d. The following are the only structures allowed on a Lot:
  - (1) One single family dwelling, not to exceed two stories in height, which must include a garage with capacity for at least one vehicle.
  - (2) One or more accessory buildings, which may include a detached garage and guest facilities, but such accessory buildings must conform to the architecture of the main dwelling, and may not overcrowd the site or be used for commercial activities. Whether proposed accessory buildings 'overcrowd' the site is a determination to be made by the ARC.

e. All service utilities, fuel tanks, clothes lines and wood piles shall be enclosed in a wall or vegetative screen approved by the ARC such that the same are not visible from the street or from any other Lot in the Properties.

g. No fence shall be allowed in excess of 6 feet in height, and all fence types, materials and locations must be first approved by the ARC; provided, that all privacy fences shall be constructed of wood or vinyl, and all chain link fences must be black; no galvanized chain link fences will be allowed.

h. Each Lot owner must provide on the Lot off street parking for not less than two passenger automobiles prior to the occupation of the dwelling on the Lot. Parking areas and driveways shall be constructed of concrete, brick, asphalt, turfstone or other material approved by the ARC.

i. No swing sets or trampolines shall be placed or allowed to remain on any Lot unless the same are placed in the back yard.

#### **Maintenance of Roads, Easements and Common Areas**

**Section 8.6 Responsibility for Road Maintenance.** The roads and easements serving the Properties are currently owned by Declarant and others and are part of the Common Areas included in this Declaration. Notwithstanding such ownership, the Association shall be responsible for insuring that such roads and easements serving the Properties are properly maintained as private roads and easements. If the owners of the roads and easements offer to transfer ownership of the roads to the Association, then the Association shall accept such transfer of title. Nothing herein shall prevent the Association from taking the steps necessary to have the roads accepted as part of the system of roads maintained by the NCDOT, at which time the responsibilities of the Association for road maintenance shall terminate.

**Section 8.7. Maintenance of Common Areas.** The Association shall be responsible for maintaining, repairing and replacing any structures on or improvements to the Common Areas, including any utility and drainage easement areas, any sewer pipes connecting off site systems to the Lots served thereby, and any shrubbery, trees and other plants on the Common Areas.

The Association shall further have the right to effect any repairs or alterations to the stormwater drainage system on the Properties, including all pipes, ditches and ponds, and to enter upon any Lot to the extent reasonably necessary to carry out such repairs. By accepting title to a Lot, all Lot owners grant a right of entry to the Association for such purposes.

In the event that the need for any maintenance, repair or replacement is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which any Lots owned by such Owner are subject.

The Association shall maintain all common areas and shall pay all premiums associated with general liability insurance insuring against liability arising from the ownership and operation of such common areas.

## **PART 9 Use Restrictions**

**Section 9.1 Land Use and Building Type.** No Lot in STRAWBERRY FIELDS, PHASE II shall be used for any purposes other than residential uses and uses incident thereto, which shall not include any commercial uses or other uses designed to generate income. All Lots are restricted to single family dwellings.

**Section 9.2 Nuisances.** No noxious or offensive activities shall be carried on upon any Lot, nor shall any activity be engaged in which would become an annoyance or nuisance to the residents of the Lots in the Property. "Noxious" or "offensive" shall mean any activity, visual impression, odor or noise which appreciably interferes with the quiet and undisturbed use of his or her property by any Lot owner or lawful occupant of any Lot. The ARC shall, in the event that a question arises, become the arbiter of what constitutes a nuisance.

**Section 9.3 Maintenance of Lots.** In the event that any Lot Owner fails or refuses to keep the Lot premises free from weeds, underbrush, refuse piles, or other unsightly growth or objects, then, after 30 days notice from the ARC, the Association or its designee shall be entitled to enter upon such lands and remove the same at the expense of the Owner, and such entry shall not be a trespass. The costs incurred by the Association for such removal shall be a lien on such Lot, and such amount, together with any collection costs shall be due and payable 30 days after the Owner is sent a bill therefore. In the event of the failure of the Owner to pay such amount within 30 days of being billed for the same, the lien for such amount shall be enforceable by legal proceedings in the same manner as provided in Section 7.10.

**Section 9.4 No Temporary Structures.** No structure of a temporary nature and no trailer, tent, shack, garage barn or other outbuilding shall be used on any Lot at any time as a dwelling or residence, either permanently or temporarily.

**Section 9.5 Parking of Vehicles and Recreational Vehicles.** No boat, motor boat, trailer, motor home or mobile home or similar type vehicle may be kept, stored or placed on any Lot, except that boats no more than 25 feet, trailers (excluding "single-wide or fixed trailers) and motor homes are permitted if placed in an area of the Lot between back line of the Lot and the back of the dwelling house. No motor vehicle shall be kept, stored or placed outside of a building on any Lot unless the same is properly registered with and licensed by the North Carolina Division of Motor Vehicles, and in operating condition.

**Section 9.6 Animals.** No animals kept for resale or breeding shall be kept or maintained on any lot or in any residence on the property. No animals posing a danger to any other owners shall be kept or maintained on any lot or in any residence on the property.

Household pets may be kept provided that their boarding does not create levels of noise or odor which interfere with the rights of other Owners to the undisturbed use and possession of their properties.

All animals must be properly penned, and not allowed to roam or run free on areas of the Property other than the Lot owned by the animal's owner.

**Section 9.7 Signs.** All signs shall be subject to the approval of the ARC, but the use of "For Sale" signs shall not be denied if in compliance with applicable laws and if properly maintained.

**Section 9.8 Alterations to Common Areas.** Only the Association may make or authorize alterations to any Common Areas.

**Section 9.9 Restrictions On Further Subdividing.** The subdividing of lots is not allowed without the approval of the Declarant, during the period of Declarant control [Section 8.1], or the Association thereafter, except that Declarant may reconfigure unsold lots. For purposes of this provision "subdivide" or "subdividing" shall include any process whereby the size or configuration of a lot is altered or the number of lots is changed.

## **PART 10 Addition of Properties**

**10.1 Vote Required.** Except as provided below, the addition of property to this Declaration shall require the assent of two-third (2/3rds) of the members of the Association at a meeting called for this purpose, or an annual meeting for which such matter has been placed on the agenda, notice of such in either case to be given at least 30 but not more than 60 days prior to the meeting.

**10.2 Declarant may add properties.** If the Declarant or its successors or assigns shall develop any Additional Property as defined herein, such property or any portion thereof may be added to the Properties included in this Declaration without assent of the Association or its members. Addition of Properties by this section shall become effective upon the filing by Declarant of a supplemental or amended Declaration in the Onslow County Register of Deeds Office.

**10.3 Use Restrictions on Additional Properties.** Nothing herein shall prevent Declarant from imposing different use restrictions or architectural controls on any Additional Properties; **provided**, that no dwellings of less than 1500 square feet shall be allowed on any additional properties, and no other restrictions or architectural controls shall be imposed on any additional properties which would adversely affect the values of the other Properties subject to these restrictions.

## **PART 11 General Provisions**

**11.1** The Association or any Owner who is a member in good standing shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, charges and other obligations now or hereafter imposed by the provisions of this Declaration. Failure of the Association or its Owner-Members to enforce an provision contained herein shall not be deemed a waiver or such provision or the right to enforce the same thereafter.

**11.2 Stormwater Runoff Enforcement.** The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce any stormwater runoff regulations which may apply.

**11.3 Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order or otherwise shall not affect any other provisions, which shall remain in effect as written.

**11.4 Lots Subject to Declaration.** All present and future owners, tenants and occupants of Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of this Declaration, as it may be amended from time to time as provided herein. Acceptance of a deed or lease, or entering into possession of a Lot shall constitute acceptance of a ratification of the validity of all of the provisions set for the herein. The provisions of this Declaration be binding and shall inure to the benefit of an by enforceable by the Association or any Owner, or their heirs, successors or assigns for a period of 20 years form the date of recording of this Declaration. After the end of the 20 year period, this Declaration shall automatically renew for successive periods of 10 years each unless modified or terminated by a two-thirds (2/3rds) vote of the Association as provided in Section 12.5 below.

**11.5 Amendment of Declaration.** Except as otherwise provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by and as provided in an instrument duly recorded in Onslow County executed by the officers of the Association, reflecting action by a two-thirds (2/3rds) vote of the Members; provided, that no amendment shall be valid if contrary to law or if the same purports to limit or negate the rights of the Declarant as provided herein.

IN WITNESS WHEREOF, Declarant and Additional Owners have executed this instrument or caused this instrument to be executed in their names by their authorized officials as of the date written above.

**STRAWBERRY FIELDS, LLC**

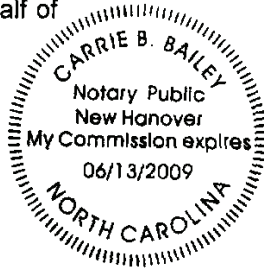
By: Henry Heil  
Manager

NORTH CAROLINA  
ONSLow COUNTY

I, the undersigned Notary Public, do hereby certify that Henry Heil appeared before me this day and acknowledged that he is Manager of **STRAWBERRY FIELDS, LLC**, a North Carolina Limited Liability Company, and that he, as Manager, being authorized to do so, executed the foregoing Declaration on behalf of the Company.

WITNESS my hand and notarial seal this 9<sup>th</sup> day of May, 2008.  
My Commission expires: 06/13/2009

Carrie B. Bailey  
Notary Public



CORRECTION EXPLANATION STATEMENT TO CORRECT OBVIOUS  
MINOR ERROR(S) MADE IN AN INSTRUMENT AS ORIGINALLY RECORDED

Re: BOOK 3098  
PAGE 877-891

RECORDED IN THE ONSLOW COUNTY REGISTRY

NAME OF ALL PARTIES TO THE ORIGINAL INSTRUMENT:

GRANTORS: STRAWBERRY FIELDS, LLC (formerly known as H.A.R.D. -n-  
Nettell Development, LLC)

GRANTEES: STRAWBERRY FIELDS PHASE II

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I/WE THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOLLOWING  
CORRECTIONS ARE MADE IN THE ABOVE NAMED RECORDED  
INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF G.S. 47-36.1  
RATIFIED JUNE 30, 1986.

DESCRIPTION OF CORRECTION(S): MISSING SPECIFIC LOTS AND MAP  
BOOK AND PAGE OF PLAT ON PAGE 877, WHICH SHOULD READ AS  
FOLLOWS:

"All of Lots 1-6 as depicted on plat of **STRAWBERRY FIELDS, PHASE II**,  
recorded in **Map Book 56 at Page 20** in the Office of the Register of Deeds of  
Onslow County."

THIS THE 27th DAY OF August, 2008.

 (SEAL)  
LADD S. GASPAROVIC, ATTORNEY

THIS EXPLANTION STATEMENT TOGETHER WITH THE ATTACHED  
INSTRUMENT DULY RECORDED AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_  
THIS THE \_\_\_\_\_, 2006 IN THE BOOK AND PAGE  
SHOWN ON THE FIRST PAGE HEREOF.

\_\_\_\_\_ BY \_\_\_\_\_  
REGISTER OF DEEDS