

Prepared by: Gordon E. Robinson, Jr., Attorney at Law

NORTH CAROLINA
ONSLOW COUNTY

**DECLARATION OF
CONDITIONS, RESERVATIONS AND RESTRICTIONS
OF COTTLE BRANCH**

THIS DECLARATION, made on the date hereinafter set forth by M THREE PARTNERSHIP, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in White Oak Township, Onslow County, North Carolina, which is more particularly described as follows:

BEING all of Lots 1 through 23, inclusive, as shown on a plat entitled "Final Plat showing Cottle Branch", recorded in Map Book _____, Page _____, Slide _____, Onslow County Registry (hereinafter called the Property), and desires to develop therein a residential community together with a common easement for a roadway, and

WHEREAS, the Declarant desires that the Property be developed in an orderly manner for the benefit of all owners of the above described Property, and

WHEREAS, the Declarant has determined this may best be done by imposing on the Property the conditions, reservations and restrictions contained herein, and by creating an association to which will be delegated and assigned the powers of maintaining the common areas within the Property, administering and enforcing the covenants and restrictions, and levying, collecting and disbursing the assessments and charges hereinafter created.

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

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to the Cottle Branch Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers and builders, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real Property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the roadways.

Section 5. "Declarant" shall mean and refer to M THREE PARTNERSHIP, LLC, a North Carolina limited liability company, its successors and assigns if such successors or assigns should acquire more than five undeveloped Lots from the Declarant for the purpose of development.

ARTICLE II: RESIDENTIAL USE

Such Lots, and each and every one thereof, are for residential purposes only and exclusively for the construction of single family residences. Only one (1) residence shall be allowed upon any Lot, together with appurtenant outbuildings. No lot shall be resubdivided.

ARTICLE III: CONSTRUCTION STANDARDS

Only site-built homes will be allowed. No dwelling of any type shall be permitted which has less than **1200** square feet of heated living space for a one-story dwelling, or less than **700** square feet of heated living space on the ground floor of a two-story dwelling. Garages, decks, terraces, open porches, basements and like areas shall not be included in square footage for the purpose of this Article.

ARTICLE IV: ROADWAYS, EASEMENTS

Every owner shall have a right of easement for ingress, egress, regress, access, utility and drainage purposes in and over the roadway(s) shown on said recorded plat, and such easement shall be appurtenant to and shall pass with the title to every Lot, whether or not specifically referenced in any deed to any Lot. The land within the easement area for said roadway shall be owned in fee simple by all the Owners. The Declarant further reserves, for itself and for the owners of such Lots as will utilize the common septic system(s), a septic system easement of **25 feet** along the front (roadside) property line of each Lot for the purpose of installation and maintenance of utility lines or services.

ARTICLE V: SETBACK LINES

No building, structure, fence, hedge, outbuilding, or appurtenance of any nature shall be located closer to any property line or street right of way than the minimum building lines shown on the recorded plat.

ARTICLE VI: ANIMALS

No animals, livestock or poultry of any kind shall be raised, kept or bred on any Lot, except as follows: dogs, cats or other household pets may be kept, provided they are not kept, bred or

maintained for any commercial purposes, and provided they are not allowed to run at large or otherwise become a nuisance to the community. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot.

ARTICLE VII: UTILITY LINES

All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead unless prior written approval is given by the Declarant or the Association. Any waiver of these restrictions shall not constitute a waiver as to other Lots or lines. The Declarant reserves the right to subject the Property to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to said utility company by each Lot Owner for a pro rata share of installation and maintenance expenses. The Declarant shall be entitled to reimbursement from each Lot Owner for any water and/or sewer permits, tap fees or meters which have been obtained at the Declarant's expense.

ARTICLE VIII: NUISANCES

No noxious, offensive or illegal activity shall be carried on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well-maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicles or similar items shall be repaired or placed on blocks or stands except in an enclosed garage. Declarant reserves for itself and for the Association the right to enter upon and cut grass, weeds or undergrowth on any Lot or easement, but shall be under no obligation to do so. The Declarant or the Association may contract for, and assess to the Lot owner, any maintenance necessary to enforce this covenant. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding Lots. Except when used during and as a part of construction of a dwelling on the Lot, no trucks or buses (other than pickup trucks of one-ton capacity or less, small vans or small trailers) shall be parked overnight on any Lot except in an enclosed garage. A pleasure boat on its trailer and recreational vehicles may be parked or stored on a Lot only behind the front face of the dwelling located on the Lot and not nearer than ten (10) feet to any side or rear Lot line. Any motor vehicle parked on any Lot shall have a current license plate, registration and inspection sticker. No elevated tanks of any kind shall be erected, placed, or permitted on any part of the Properties, except as approved by the Declarant. Any tanks for use in connection with any residence constructed on the Properties, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring lots, roads, or streets. All clotheslines, garbage cans, equipment, coolers, wood piles, or storage piles shall be walled in or fenced to conceal them from the view of neighboring lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Declarant or Association prior to construction.

ARTICLE IX: SIGNS

No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any Lot or improvement thereon except "For Sale" or "For Rent" signs. Nothing herein shall be construed to prevent the Declarant from erecting, placing, or maintaining signs, structures and offices as may be deemed necessary by them for the operation of the subdivision.

ARTICLE X: SIGHT DISTANCE AT INTERSECTIONS

No fence, wall, hedge, shrub planting or other item which obstructs sight lines at elevations between two (2) and Four (4) feet in height shall be permitted to remain on any Lot within any sight triangle easement as shown on the recorded plat, nor within ten (10) feet of the intersection of the road right-of-way line with any driveway, and no portion of any tree shall be permitted to remain within such areas unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

ARTICLE XI: FENCES

No fences in excess of six (6) feet in height shall be constructed between the front line of the residence and the back lot line; and between the front of the residence and the street, any fence must be ornamental in nature (such as brick, split rail, or picket) and must not exceed four (4) feet in height.

ARTICLE XII: DRAINAGE

Drainageways shall conform to the requirements of all lawful public authorities, to the full extent of the authority given them by law. Further, Declarant may, at its option, require more restrictive drainageways if the same would promote the best interest of the development.

ARTICLE XIII: ARCHITECTURAL CONTROL COMMITTEE

Section 1. In order to preserve and protect the appearance of the Properties and the value of the Lots and the residences constructed thereon, no building, wall, fence or other structure or improvement of any type shall be erected, placed or altered on any Lot until the construction plans and specifications have been approved in writing by the Architectural Control Committee. Any such improvements may be made only in accordance with the approved plans and specifications. Refusal of approval of plans and specifications may be made on any grounds, including purely aesthetic grounds, in the sole discretion of the Architectural Control Committee. Any change in the appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping (with the exception of the planting or pruning of flowers and shrubs) shall be deemed such an alteration requiring approval. The Architectural Control Committee shall have the authority to publish such rules and regulations as it deems necessary to carry out the provisions and intent of this Article.

Section 2. Within thirty (30) days after receipt of the required plans and specifications, the Architectural Control Committee shall notify the Lot Owner in writing of its approval, disapproval or approval with conditions, of the submitted plans and specifications, or that further information is required for a determination, in which case the thirty day response period shall commence only upon receipt of the requested further information. If no such response is made within the thirty (30) days, the plans and specifications shall be deemed approved as submitted.

Section 3. Until the sale of the last numbered Lot in the Properties, or of any subsequent phases or additions thereto, the Declarant, its successors or assigns shall have all of the powers and authority of the Architectural Control Committee as described herein. Upon the resignation of the Declarant, its successors or assigns from the Architectural Control Committee, such powers and authority shall pass to the Association, which may appoint three (3) Lot Owners to compose the membership of the Architectural Control Committee. In the event of the death, disability or resignation of any such Owner-member, the remaining members shall appoint a successor, to serve until the following annual meeting of the Association.

Section 4. A majority of the Architectural Control Committee may take any action the committee is empowered and authorized to take, and may employ consultants, upon approval of the Association's Board of Directors. The members of the Architectural Control Committee shall not be entitled to compensation for their services absent Board approval, but may impose a reasonable fee, to be delivered when plans and specifications are submitted, to cover the expense of any consulting fees.

ARTICLE XIV: FUTURE DEVELOPMENT

The Declarant reserves the right to annex any property now owned or hereafter acquired by the Declarant and adjoining the Property, and to subject such additional property to the restrictive covenants set forth herein, without prior approval or consent of the Lot Owners or Association.

ARTICLE XV: MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the association. Membership shall be apurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

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

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- b. On the fifth anniversary of the conveyance of a Lot or other parcel within the development.

ARTICLE XVI: COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Purpose of Assessments. The assessments described herein and levied by the Association or Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and their Lots, and in particular the maintenance and upkeep of the signs, drainageways, **the off-site septic areas** (shown on the plat as Lots 2A, 3A, 4A, 6A, 8A, 9A, 16A, 20A, 22A and 23A), and for the cost of labor, equipment, materials, repairs, management and supervision thereof. **Costs of off-site septic area maintenance, repairs or capital improvements will be shared equally among the lots served by the off-site septic areas.**

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be zero (\$0.00) per Lot. **There shall be an extra \$100.00 per year assessment for each of the Lots utilizing the off-site septic areas.**

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased each year not more than twenty (20%) percent above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twenty (20%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 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 applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty (50%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and to the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 60 days following the preceding meeting nor less than five (5) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a regular basis. However, notwithstanding this section or any other section contained herein, Declarant shall not be obligated to pay the Uniform Assessment provided the lot is unoccupied and has not been conveyed from the Declarant.

Section 7. Date of Commencement of Annual Assessments; Due Date. The annual assessments provided for herein shall commence as to all Lots on the date of the conveyance of the Lot from Declarant to Owner. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The first year's Association dues shall be collected at the time of the purchase from the Declarant. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum or such other rate as the Association may determine. The Association may bring an action at law against the Owner personally obligated to pay the same or

foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of this Lot. Should the Association (or Declarant) find it necessary to employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, all costs incurred in such enforcement, including court costs and a reasonable fee for counsel, shall be paid by the owner of such Lot or Lots against which such enforcement action is taken, and the Association (or Declarant) shall have a lien upon such Lot or Lots to secure payment of such costs.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE XVII: GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

Section 3. Document availability. The Association shall have current copies of the Declarations, By-Laws, and other rules concerning the project as well as its own books, records, and financial statements available for inspection by Lot Owners or by holders, insurers and guarantors of first mortgages that are secured by Lots and improvements within the development. These documents shall be available during normal business hours and under other reasonable circumstances. There shall be an annual audited statement prepared each year with copies made available to the Lot Owners, and any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the development.

Section 4. Condemnation, Destruction, or Liquidation. The Association will be deemed to represent the owners in any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Areas and shall have the authority to negotiate, settle, and otherwise make agreements on behalf of all Lot Owners and their mortgage holders. Any and all funds shall be distributed to each of the Lot Owners in equal shares. However, all first mortgage holders shall be given (10) days notice prior to any disbursements to the Lot Owners.

Section 5. Limitation of Ability to Sell and Lease. No Lot Owner's right to sell, convey, transfer or mortgage his Lot shall be restricted.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive period of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot owners. Any amendment must be recorded.

ARTICLE XVIII: RESIGNATION OF DECLARANT

The Declarant shall grant and convey all of its rights and privileges under these covenants, conditions, reservations and restrictions to the Association, at such time as the Class A votes of the Lot Owners shall exceed those of the Declarant. Upon such conveyance and grant the Association shall have and shall succeed to all rights and duties with the same powers as if the Association had been named as Declarant herein.

ARTICLE XIX: STORMWATER RUNOFF

Section 1. The following covenants are intended to insure ongoing compliance with State Stormwater Management Permit No. **SW8 110714**, as issued by the Division of Water Quality under NCAC 2H.1000.

Section 2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

Section 3. These covenants are to run with the land and shall be binding upon all Owners and all persons and parties claiming under them.

Section 4. 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.

Section 5. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

Section 6. The maximum allowable built-upon area (BUA) per Lot is shown on the attached table entitled "Exhibit A- Allowable Built-Upon Area". This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

Section 7. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development, except for average driveway crossings, is strictly prohibited by any persons.

Section 8. For those lots adjacent to surface waters, each lot will maintain a minimum 50 foot wide vegetated adjacent to surface waters.

Section 9. All roof drains shall terminate at least 50 feet from surface waters.

IN WITNESS WHEREOF, the Declarant has caused the due execution of this instrument on this ____ day of _____, 2012.

Declarant: **M THREE PARTNERSHIP, LLC**

By:

Elijah T. Morton, Member-Manager

NORTH CAROLINA
ON SLOW COUNTY

I, a Notary Public in and for the aforesaid County and State, hereby certify that Elijah T. Morton personally appeared before me this day and acknowledged that he is the Member-Manager of M THREE PARTNERSHIP, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of the company, he has signed the foregoing instrument in its name and on its behalf as its act and deed. Witness my hand and notarial seal, this the ____ day of _____, 2012.

My Commission Expires: _____, Notary Public

(Notary Stamp/Seal)

Exhibit "A"

(Allowable Built-upon Area)

Lot #	Total Lot Area	Allowable Built-upon Area	% Built-upon Area
1	73,029	10,000	14%
2	22,090	6,000	27%
3	22,375	6,000	27%
4	24,076	6,000	25%
5	23,422	6,000	26%
6	21,423	6,000	28%
7	22,528	6,000	27%
8	20,765	6,000	29%
9	23,055	6,000	26%
10	25,144	6,000	24%
11	22,153	6,000	27%
12	57,903	10,000	17%
13	289,901	43,000	15%
14	63,815	10,000	16%
15	20,604	6,000	29%
16	19,762	6,000	30%
17	20,883	6,000	29%
18	20,545	6,000	29%
19	18,964	6,000	32%
20	19,918	6,000	30%
21	19,452	6,000	31%
22	27,235	6,000	22%
23	56,970	10,000	18%