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Nash County North Carolina  
Anne J. Melvin Register of Deeds

**BK 3089 PG 666 - 701**

**STATE OF NORTH CAROLINA**

**COUNTY OF NASH**

5195

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
RED OAK FARMS DEVELOPMENT**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RED OAK FARMS DEVELOPMENT** (as may be amended or supplemented as set forth herein, "Declaration") is made this 6 day of November, 2020 by RMT INVESTMENTS, LLC, a North Carolina corporation, whose address is 5088 Oak Level Road, Rocky Mount, NC 27803 (the "Declarant").

**WITNESSETH:**

A. Declarant is the owner and developer of certain real estate in Nash County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property" or "Subdivision"); and

B. Declarant is developing the Property known as "Red Oak Farms Development" by subdividing it into "Lots" that are to be used for residential purposes as well as common real estate and improvements that are to be owned by a homeowners association to which the Owner of a Lot must belong and pay lien-supported maintenance assessments; and

C. At the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Property, if any, as they are built, and, at the time of completed development, the entire Property, excluding the Lots and dedicated streets, if any, shall be conveyed without cost or charge to the Association.

**THEREFORE**, the Declarant hereby declares that all of the Lots and Common Areas (defined below) located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

Submitted electronically by "The Parker Law Office PLLC"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Nash County Register of Deeds.

## ARTICLE I

### DEFINITIONS

Section 1.1       “Annual Organizational Board Meeting” means the annual organizational board meeting of the Board, which shall take place immediately after each Annual Meeting of the Members.

Section 1.2       “Annual Meeting” means the annual meeting of the Members held in Nash County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

Section 1.3       “Articles” or “Articles of Incorporation” shall mean those articles, filed with the Secretary of State of North Carolina, incorporating Red Oak Farms Development Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.4       “Assessments” means Regular Assessments, Special Assessments, Working Capital Assessments, Individual Assessments and Fine Assessments.

Section 1.5       “Association” shall mean and refer to RED OAK FARMS DEVELOPMENT HOMEOWNERS ASSOCIATION, INC., to be formed as a non-profit corporation, its successors and assigns.

Section 1.6       “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section 1.7       “Bylaws” shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.8       “Constituent Documents” shall mean the Declaration, the Bylaws, the Articles of Incorporation, any Roadway Declaration and the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.9       “Common Areas” shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon) owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, parcels designated on the Subdivision plat as “Park” (unless such parks are later dedicated to the public by a subsequent dedication plat or conveyance), “COS,” “Open Space,” “Common Area” or reserved as an access drive or private street.

Section 1.10 “Common Expenses” shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. “Common Expenses” shall also include the cost of operation, maintenance, improvement, and replacement of any Recreational Facilities, including establishing reserves therefore. “Common Expenses” shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road and parking lot resurfacing. “Common Expenses” shall also include all reserve funds or other funds established by the Association. “Common Expenses” shall be construed broadly.

Section 1.11 “Declarant” shall mean and refer to RMT Investments, LLC, a North Carolina corporation, its successors and assigns as a Declarant.

Section 1.12 “Default” shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.13 “Development Period” means the period of time during which Declarant holds a fee simple interest or contractual right in any portion, however small, of the land described in Exhibit A and/or Exhibit B attached hereto and incorporated herein.

Section 1.14 “Dwelling Unit” shall mean and refer to the individual family living unit on an individual Lot.

Section 1.15 “Lot” shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed. The Declarant has initially created twenty-eight (28) Lots in the Subdivision and has the right to establish additional Lots in accordance with the terms of this Declaration.

Section 1.16 “Member” shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below and the Declarant while the declarant owns any property in the Subdivision.

Section 1.17 “Owner” shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.

Section 1.18 “Plat” shall mean and refer to the record plat of the Subdivision recorded by Declarant, as the same may be amended or supplemented by Declarant from time to time.

Section 1.19 “Planned Community Act” shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.20 “Property” or “Subdivision” shall mean and refer to that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 1.21 “Resident” shall mean and refer to any person, not an Owner, living in the Owner’s Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.22 “Rules and Regulations” shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.23 “Tenant” means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The Property and each portion thereof shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

## **ARTICLE III**

### **PROPERTY RIGHTS IN COMMON AREAS**

Section 3.1 Owner’s Easements of Enjoyment. Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Such rights and privileges shall be subject, however, to the following:

3.1.1 The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner’s Lot for a period not to exceed the period of such non-payment or delinquency;

3.1.2 The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;



3.1.3 All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas, including, without limitation, any Roadway Declaration;

3.1.4 The right of the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

3.1.5 The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities.

Section 3.2 Extension of Use. Any Owner may extend his right of enjoyment to the Common Areas to the immediate members of Owner's family, Owner's Tenants, guests or contract purchasers of the Owner's Lot.

Section 3.3 Title to Common Areas. The Declarant will convey by deed all Common Areas to the Association in fee simple absolute no later than after the sale of the final lot in the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

Section 3.4 Use of Common Areas by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots have been sold.

## **ARTICLE IV**

### **HOMEOWNERS ASSOCIATION**

Section 4.1 Homeowners Association. There is or will be created a North Carolina non-profit corporation known as Red Oak Farms Development Homeowners Association, Inc., which shall be responsible for the maintenance, management and control of the Common Areas and upon each Lot and Dwelling Unit as more specifically set forth in this Declaration.

Section 4.2 Board of Directors and Officers. The Board of Directors, and such officers as the may elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and

Regulations shall not be inconsistent with this Declaration, the Articles, Bylaws or the terms of any Roadway Declaration. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4      Membership of Association. Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.5      Classes of Membership. The Association shall have two (2) classes of Membership:

4.5.1      Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot is a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed that is subject to Assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2      Class B Members. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A membership upon the expiration of the Development Period.

4.5.3      Voting. Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period.

Section 4.6      Maintenance Obligations of the Association. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth hereinbelow; (c) all conduits, ducts, utility pipes, plumbing, wiring

and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.7      Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include:

4.7.1      To clean, maintain, keep in good order, repair and replace at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

4.7.2      To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.3      Not to paint or otherwise alter, decorate or change the appearance of any exterior portion of his Dwelling Unit, without the written consent of the Association.

4.7.4      Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exists.

4.7.5      Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee, Tenant or licensee of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.4 and Section 7.7 below.

4.7.6      The owner shall repair any damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot within 180 days after such damage or destruction or, where repairs cannot be completed within 180 days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within 90 days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified herein.

Section 4.8 Construction Defects. The obligations of the Association and of Owners to repair, maintain and replace the portions of the Subdivision for which they are respectively responsible shall not be limited, discharged or unreasonably postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section 4.8 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if by repairing the defect, Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.9 Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing his obligation hereunder. Likewise, this Section 4.9 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

## ARTICLE V

### **COVENANT FOR ASSESSMENTS**

Section 5.1 Regular Assessments. Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses. Lots 1, 2, and 3 are exempt from Regular assessments (lots shown on map recorded in Map Book 42, Page 229) as they will all access Red Oak Road and not through Subdivision Roads. The initial Regular Assessment is \$450 per month.

Section 5.2 Special Assessment. In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas provided that any special assessment shall also be approved by a simple majority of the votes cast by members present at a duly called meeting of the members to consider the special assessment. Until the expiration of the Development Period or the date on which Declarant no longer owns any portion of the subdivision, whichever is later, no special assessment may be approved without consent of the Declarant. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements, and shall give the Lot Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and payable. Notwithstanding the foregoing, Declarant shall have no obligations to pay any

Special Assessment with respect to any Lot owned by it unless there is a Dwelling Unit located upon the Lot that is occupied as a residence.

Section 5.3      Working Capital Assessment. The Board of Directors, or the Declarant during the Development Period, may establish a Working Capital Assessment to be assessed upon the initial transfer of record of the Lot from the Declarant (or successor declarant or designated declarant) to the Lot Owner (other than a successor declarant or designated declarant due on his or her Lot as his or her initial contribution to the working capital of the Association. While the Declarant is in control of the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs. When control of the Association is transferred to the Lot Owners, the working capital fund shall be transferred to the Association for deposit to a segregated fund.

Section 5.4      Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), Resident, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.5      Date of Commencement of Assessments; Due Dates; Determination of Regular Assessments; Fine Assessments.

5.5.1      The monthly Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of the Dwelling Unit to the Owner and shall be adjusted according to the number of days remaining in the month. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as Declarant transfers the Lot to a third party. The Board of Directors shall fix the amount of the monthly Regular Assessment to be paid by each Class A Member against each Lot at the beginning of each calendar year. Written notice of the monthly Regular Assessment shall be sent to every Class A Member subject thereto. The Board of Directors shall establish the due dates.

5.5.2      The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act. A lien may be filed for this Fine Assessment and this Fine Assessment may be enforced by foreclosure and otherwise treated as a Regular Assessment.

5.5.3      If the Association is paying the water and/or sewer bill(s) for the Subdivision or any Lot Owner within the Subdivision, the Association may assess each Lot Owner benefited for its share of the water and/or sewer bill(s). Each Lot Owner shall bear an equal share of the bill, but the Association can assess an extra amount against a Lot Owner to recover the cost of any extraordinary amount of water used by that Lot Owner. "Extraordinary" shall be as determined by the discretion by the Board of Directors. The