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CUYAHOGA COUNTY FISCAL OFFICE

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS**

**OF**

**GRAPPA FARMS  
SUBDIVISION**

**HIGHLAND HEIGHTS, CUYAHOGA COUNTY, OHIO**

**By:**

**Grappa Farms, LLC  
An Ohio limited liability company**

**9124 Tyler Boulevard  
Mentor, Ohio 44060  
Phone: (440) 255-6535**

**This Instrument Prepared By:**

**Joseph P. Szeman, Esq.  
Hennig, Szeman & Klammer Co., L.P.A.  
8500 Station Street, Suite 245  
Mentor, Ohio 44060**

**DECLARATION**  
**ACKNOWLEDGMENT OF FISCAL OFFICER**

**Submitting the property known as the Grappa Farms Subdivision,  
with common elements, being located in Highland Heights,  
Cuyahoga County, Ohio, to the provisions of Chapter 5312 of the Ohio Revised Code.**

**This will certify that copies of this Declaration, together with Exhibits thereto,  
have been filed in the Office of the Fiscal Officer, Cuyahoga County, Ohio.**

**Dated: \_\_\_\_\_, 2022**

**Cuyahoga County Fiscal Officer**

\_\_\_\_\_  
**Deputy Fiscal Officer**

**GRAPPA FARMS HOMEOWNERS' ASSOCIATION, INC.**  
**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS**

**GRAPPA FARMS SUBDIVISION, HIGHLAND HEIGHTS,  
CUYAHOGA COUNTY, OHIO**

THIS DECLARATION, (the "Declaration") made this 19<sup>th</sup> day of September, 2022, by and between GRAPPA FARMS, LLC, an Ohio limited liability company (hereinafter referred to as "Declarant"), and GRAPPA FARMS HOMEOWNERS' ASSOCIATION, INC., an Ohio not-for-profit corporation (hereinafter referred to as the "Association").

**PREAMBLE**

- A. The Declarant is the owner of real property containing approximately 19.5441 acres (+/-) situated on the north side of the Interstate 271 right-of-way in Highland Heights, Cuyahoga County, Ohio, east of the terminus of Longspur Road thence east to the border of the City of Willoughby Hills and consisting of Sublots 1 through 21, inclusive, a publicly dedicated street and common elements all as shown on the Plat (the "Subdivision"), which is legally described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and
- B. The Declarant desires to create a separate planned residential community pursuant to Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law) on the Property which, upon completion, is planned to consist of (however the Declarant is under no obligation to construct) twenty-one (21) Dwelling Units (hereafter defined) to be constructed on individual Sublots (hereafter defined), and including a public street and common elements (hereafter defined) to be maintained by the Association (hereafter defined) for the benefit of the Owners (hereafter defined) of the Dwelling Units; and
- C. The Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Property to create an agency to which should be delegated and assigned the powers of maintaining and administering the Areas of Common Responsibility within the Property and administering and enforcing the covenants

and restrictions of this Declaration, and collecting and disbursing the assessments and charges created therein, and to this end has incorporated under the laws of the State of Ohio, as a non-profit corporation, being GRAPPA FARMS HOMEOWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"), for the purposes of exercising the functions aforesaid; and

- D. The Association joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the protective covenants and restrictions herein contained; and
- E. Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth, and further specified that this Declaration shall constitute covenants to run with the land and shall be binding upon Declarant, and its successors and assigns and all other owners of any part of said real Property, together with their grantees, successors, heirs, executors, administrators or assigns.

ARTICLE I  
PREAMBLE; PROPERTY; DECLARANT'S RIGHT TO ADD  
AND DELETE LAND

Section 1.1 - Preamble

The Preamble is incorporated in and made a part of this Declaration.

Section 1.2 - Property

The Property which is and shall be owned, held, transferred, sold, used and occupied subject to this Declaration is the real property described in Exhibit "A" and shown graphically on Exhibit "B."

Section 1.3 - No Expansion and No Contraction of the Property

- (a) No reservation is made of any right to add additional property to the Property.
- (b) No reservation is made of any right to delete lands from the Property.

**ARTICLE II**  
**EXHIBITS AND DEFINITIONS**

**Section 2.1 - Exhibits**

The following Exhibits are attached to and made a part of this Declaration:

EXHIBIT "A":       A legal description of the Property

EXHIBIT "B":       Plat

EXHIBIT "C":       Form Certificate of Compliance (See, § 8.8 herein)

EXHIBIT "D":       Code of Regulations (Bylaws) of Grappa Farms Homeowners' Association, Inc.

**Section 2.2 - Definitions**

For the purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

(a) "Act" means Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law).

(b) "Affiliate of Declarant" means any person who controls, is controlled by, or is under common control with the Declarant. (1) A Person "controls" the Declarant if the Person (a) is a general partner, officer, director, managing member or employer of the Declarant, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the Declarant, (c) controls in any manner the election of a majority of the directors of the Declarant, or (d) has contributed more than twenty percent (20%) of the capital of the Declarant; (2) a Person "is controlled by" a Declarant if the Declarant (a) is a general partner, officer, director, or employer of the Person, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the Person, (c) controls in any manner the election of a majority of the directors of the Person, or (d) has contributed more than twenty percent (20%) of the capital of the Person. Control does not exist if the powers

described in this subsection are held solely as security for an obligation and are not exercised.

(c) "Areas of Common Responsibility" means and refers to (1) landscaping, lighting, irrigation and other improvements within the entrance(s) situated at Maypine Boulevard and Miner Road (the "Entrance"), as detailed in § 8.5(d); (2) islands and/or medians within public rights-of-way to which the Association has been granted landscaping easements, if any; (3) storm drainage that generally serves the Property and that is not the responsibility of the City or the County, including storm water retention/detention and management areas (including such areas outside the Property over which an easement has been granted to the Association); and (4) cluster mailbox unit(s), if any.

(d) "Articles" or "Articles of Incorporation" are the legal document(s) filed with the Secretary of State of Ohio to create the Association.

(e) "Assessments" means the assessments levied against all Owners of Dwelling Units to fund Common Expenses.

(f) "Association" means Grappa Farms Homeowners' Association, Inc., a non-profit Ohio corporation, Ohio entity no. 4921126, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

(g) "Board" means the Board of Directors of the Association.

(h) "Builder" means any Person who (1) purchases a Sublot within the Property for the purpose of the construction and sale of one or more Dwelling Units, such Builder also being an Owner during the period such Builder owns title to the Sublot; or (2) is retained by an Owner to construct a Dwelling Unit or any addition thereto.

(i) "Bylaws" means the Code of Regulations of the Association which is the instrument filed with this Declaration that is referred to as "Regulations" pursuant to Ohio Revised Code Chapter 1702 (Ohio Nonprofit Corporation Law).

(j) "City" means Highland Heights, Cuyahoga County, Ohio.

(k) "Class 'B' Control Period" means the period of time during which the Class "B" Member (the Declarant) is entitled to appoint a majority of the members of the Board, as provided in Article III of the Bylaws.

(l) "Common Expenses" means the actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association. Unless otherwise provided in this Declaration, all costs the Association incurs in the administration, governance and maintenance of the Property are Common Expenses and all costs of administration, operation, maintenance, repair and replacement of Areas of Common Responsibility are Common Expenses. The funding for the perpetual inspection, operation and maintenance of the storm water management infrastructure is a Common Expense.

(m) "County" means Cuyahoga County, Ohio.

(n) "Declarant" means Grappa Farms, LLC, an Ohio limited liability company, and the specifically designated successors or assigns of any of its rights as Declarant under the Declaration or under any supplement to the Declaration involving the Property. No person, real or corporate, shall be deemed to be a successor, alternate or additional Declarant for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Declarant herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Declarant only to the particular rights and interests of Declarant under the Declaration or under a supplement to the Declaration. The Declarant is also sometimes referred to herein as the "Original Declarant."

(o) "Dwelling Unit(s)" means all units of residential housing to be situated on the Property. Without limiting the generality of the foregoing, Dwelling Unit(s) shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses on separately platted Sublots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Dwelling Unit shall also include all portions of the Sublot owned as a part of any structure thereon. For the purposes of this Declaration, a Dwelling Unit shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Dwelling Unit by the governmental authority having jurisdiction over the same, and the Dwelling Unit has been conveyed to a person other than the Declarant.

(p) "Eligible Mortgage Holders" means banks, savings and loan associations, insurance companies and other institutional lenders, holders, insurers or guarantors of first mortgages on the Property or portions thereof.

(q) "Member" means a person or entity entitled to membership in the Association, as provided in the Declaration and Bylaws.

(r) "Occupant" means a person in possession of a Dwelling Unit including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Dwelling Unit.

(s) "Owner" means the record Owner of fee simple title in a Sublot and Dwelling Unit situated thereon, including the Declarant (except as otherwise provided herein) with respect to any unsold Dwelling Unit, but Owner shall exclude in all cases any party holding an interest merely as security for the performance of an obligation. If a Dwelling Unit is sold under a land installment contract, the purchaser ("vendee") rather than the fee Owner will be considered to be the Owner. For the purpose of this Declaration, the Owner of Dwelling Units that are rented to others shall be the only Person entitled to cast votes. Every Owner shall be treated for all purposes as a single Owner for each Dwelling Unit held irrespective of whether such ownership is joint or in common. Where such ownership is joint or in common, the majority vote of such Owners shall be necessary to cast any vote to which such Owners are entitled.

(t) "Ownership Interest" means the entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his/her Dwelling Unit.

(u) "Plat" means the subdivision plat(s) creating the Sublots and streets/roads within the Property.

(v) "Person" means a natural individual, corporation, partnership, limited partnership, limited liability company, trust or other entity to which the law attributes the capacity of having rights and duties.

(w) "Property" means the land described in Exhibit "A" of this Declaration, as the same may from time to time be amended, and includes the total land area regardless of how the Property may be subdivided pursuant to Plat.

(x) "Proposed Dwelling Unit" means and refers to Dwelling Units proposed but not yet constructed or Dwelling Units under construction as shown on preliminary plans submitted by the Declarant or a Builder and any subsequent plans approved by the City.



(y) "Special Declarant Rights" means those rights reserved for the benefit of the Declarant as provided for in this Declaration and the Bylaws, and shall include, without limitation, the following rights: (1) to maintain sales offices, management offices, customer services offices, signs identifying and/or advertising the Property; (2) to grant and to reserve easements over the Property and to use easements for the purpose of making improvements within the Property; and (3) to appoint or remove any Board Members or officers of the Association during the period that the Declarant has the right to elect or designate members of the Board.

(z) "Subdivision" means the Grappa Farms Subdivision as shown and graphically depicted on the Plat.

(aa) "Sublot" means a platted single-family lot upon which a Dwelling Unit has been or may be constructed.

(bb) "Subsequent Amendment" means an amendment to this Declaration. A Subsequent Amendment may but is not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the provisions of this Declaration; and/or (ii) otherwise amend this Declaration and/or the Bylaws.

(cc) "Tenant" means any person(s) having a possessory leasehold estate in a Dwelling Unit, other than an Owner.

### ARTICLE III EASEMENTS

#### Section 3.1 - Utility Easements

There is hereby reserved in favor of Declarant and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, storm and sanitary sewers, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant and/or the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Dwelling Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained

in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Declarant or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Declarant and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of easements for utility purposes does not overburden the utilities serving the Property. Any conflicts between the provisions of this Section and a plat granting similar easements shall be resolved in favor of the plat.

### Section 3.2 - Easements for Construction, Alteration, etc.

Easements are hereby created in favor of the Declarant, the Association, all Owners, and their respective agents, contractors, and employees upon such portions of the Sublots as may be reasonably necessary for access thereto in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Dwelling Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Dwelling Unit, Sublot, or other structure or improvement on the Property. Any Person benefiting from the foregoing easement shall indemnify and save harmless the Declarant, the Association, and each Owner and Occupant from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such construction, rebuilding, alteration, restoration, or maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

### Section 3.3 - Drainage Rights and Authority to Transfer Drainage and other Easement Rights to the City

The Declarant, each Owner, and the Association shall have the non-exclusive right and easement in common to utilize storm detention and/or retention areas (if any), storm sewers and drainage pipes in, over, and upon the Property for the purposes of drainage of surface waters on the Property, said right and easement being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system unless and until those easement areas are dedicated by the Association and accepted by the City and/or the County or other governmental authority having jurisdiction by formal action of the City and/or County. No Person shall interfere with, by means of constructing any structure or otherwise, the free flow of water through any drainage ditches, swales, storm water easements or storm sewers within the Property, without the written consent of the Association and the Cuyahoga County Engineer.

### Section 3.4 - Mound Easement

(a) An easement is hereby created in favor of the Declarant, the Association, all Owners, and their respective agents, contractors, and employees upon such portions of the Sublots adjacent to Interstate 271 whereon a landscaped earthen mound, as depicted on the Plat, extending a distance east to west of approximately seventy (70) feet is installed to mitigate noise, light, odor, and other secondary effects from Interstate 271, as may be reasonably necessary for access, maintenance, plantings and/or related appurtenances.

(b) Each Owner shall be responsible for maintenance of the vegetation located within the area of the mound easement on their Sublot and shall not, except for routine pruning and trimming, removal of dead materials, and weeding and/or the removal of noxious vegetation, remove, alter, destroy, or take any other adverse action(s) impacting the vegetation unless upon prior approval in writing by the Association.

(c) The Association shall be able to exercise its easement rights under the terms of this section in the event of a violation of its terms; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Dwelling Unit, Sublot, or other structure or improvement on the Property.

### Section 3.5 - Easements to Run with the Land

All easements and rights described herein are easements appurtenant to the Property, including the Sublots and Dwelling Units, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and any Builder, Owner, Tenant, Occupant, purchaser, mortgagee, or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of the such properties, easements created by this Declaration for the benefit of any Owner, Tenant, Occupant, purchaser, mortgagee, City, County, and/or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

**ARTICLE IV**  
**OWNERSHIP AND OPERATION OF STORM WATER FACILITIES**

**Section 4.1 - Conveyances**

The Association shall hold title to the hard improvements of the stormwater management infrastructure, inclusive of all drains, pipes, inlets and outlets used for the common benefit of the Property. Title to any of the land area upon which any drainage ditch, swale, or retention/detention basin(s) is/are located shall remain that of the Owner of the Sublot, subject to the easement rights reserved to the Association, the Owners and/or to the City and County.

**Section 4.2 - Alteration**

All alterations to the stormwater management infrastructure including, but not limited to, installation of any improvements, maintenance, repair and replacements shall be made or done solely by or at the direction of the Association (or the Declarant, during the Class "B" Control Period), shall be done in accordance with all City zoning restrictions and the approved development plan (and as may be amended), and no such alterations shall be permitted to be completed by any Owner or Occupant without prior written approval of the Association.

**ARTICLE V**  
**THE ASSOCIATION**

**Section 5.1 - Existence**

The Association is an Ohio not-for-profit corporation. The Association shall not be terminated or dissolved unless all responsibilities of the Association are assumed by a successor association.

**Section 5.2 - Membership and Voting Rights**

(a) **Classes of Membership**

The membership of the Association is and shall be divided into two (2) classes:

- (1) **Class "A" Membership**. Each Owner of a Sublot, with the exception of the Declarant, shall automatically be a Class "A" Member of the

Association. All Owners shall be Members of the Association, and membership in the Association is mandatory of all Owners of Sublots within the Property. The Class "A" Membership is appurtenant to the ownership of each Sublot and shall not be separable from the ownership of any Sublot and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Sublot, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more Persons, shall have more than one membership in the Association per Sublot owned.

- (2) Class "B" Membership. The Declarant shall automatically be the sole Class "B" Member of the Association.

(b) Voting Rights

- (1) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Sublot in which they hold the interest required for membership under § 5.2(a)(1) hereof; there shall be only one (1) vote for each Sublot. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Sublot required for membership, the vote for such Sublot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Sublot shall be suspended if more than one (1) Person seeks to exercise it. In the case of a Sublot owned or held in the name of a corporation, partnership, limited partnership, limited liability company, trust or other entity, a certificate signed by such Owner shall be filed with the Secretary of the Association naming the Person authorized to cast a vote for such Sublot, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such entity shall not be considered, nor shall the presence of a Person purporting to act on behalf of such entity at a meeting be considered in determining whether the quorum requirement for such meeting has been met. When a fiduciary or other legal

representative of an Owner has furnished to the Association proof of such person's authority, such person may vote as though he or she were the Owner.

- (2) Class "B" Member. The Class "B" member shall be the Declarant and shall be entitled to ten (10) votes for each Sublot owned. The Class "B" membership shall cease at such time as the Declarant or a successor designated by the Declarant is no longer an Owner of a fee simple interest in the Property. The period during which the Class "B" Membership exists is referred to as the "Class 'B' Control Period."

For purposes of determining the number of votes allowed under this Section the total number of Sublots shall be twenty-one (21), which is the total number of Sublots which the Declarant intends to (but is not obligated to) submit to the provisions of this Declaration.

#### Section 5.3 - Board and Officers of the Association

The Board and the Officers of the Association shall be elected as provided in the Bylaws and shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, the Articles of Incorporation and Bylaws, except as otherwise specifically provided.

#### Section 5.4 - Powers of the Association

Notwithstanding the rights and easements of enjoyment and use created in Article III of this Declaration, and in addition to any power the Association shall have pursuant to this Declaration or in law, the Association shall have the power:

(a) To borrow money from time to time for the purpose of meeting its obligations with respect to the Areas of Common Responsibility and may secure said financing by an assignment of future income from Assessments.

(b) To enter or authorize its agents to enter on or upon the Property, or any part thereof, when necessary in connection with any maintenance, repair or construction for which the Association is responsible or has a right to maintain, repair or construct. Such entry shall be made with as little inconvenience to the Owner and Occupants thereof as practicable and any damage caused thereby shall be repaired by the Association.

(c) To grant or obtain or dedicate to public use easements and rights-of-way (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property; provided, however, that after the Class "B" Control Period no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer be signed by one hundred percent (100%) of the Members has been recorded. Prior to the termination of the Class "B" Control Period the Declarant has the exclusive authority to exercise the right of dedication or transfer.

(d) Borrow money, and issue, sell and pledge notes, assessments or Additional Assessments, or assign the future income from such assessments.

## ARTICLE VI RESPONSIBILITIES OF THE ASSOCIATION

### Section 6.1 - Exclusive Duties

The Association shall have the exclusive duty to perform the following functions:

Storm Water Drainage. To maintain all piping, culverts, drains, storm water detention and retention basins, and other facilities now or hereafter situated upon any portion of the Property that are not the responsibility of the City or the County and which are intended for the collection, retention, detention, transmittal or disposal of stormwater in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same. The Owner's responsibilities shall be deemed transferred to the Association at the expiration of the Class "B" Control Period.

### Section 6.2 - Taxes and Assessments

The Association shall pay all taxes and assessments levied against portions of the Property owned by the Association, including, without limitation, personal property taxes, general real estate taxes and special assessments certified by the applicable public authority following conveyance of such property to the Association, the same to be prorated to the date such property is created as a separate tax parcel and is submitted to this Declaration.

### Section 6.3 - Insurance

(a) Casualty Insurance. The Association may carry insurance against any losses to the personal property of the Association. The Board shall determine, in the exercise of prudent business judgment, whether the cost of such insurance is prudent based upon factors including, but not necessarily limited to, risk of loss, the amount of any reserves, and the financial impact of any special assessment which may be required to cover foreseeable non-insured losses.

(b) Fidelity Bonds. To the extent available for a reasonable premium (or, if (i) it is required by operation of law pursuant to the Act and any future amendments to the Act, and/or (ii) to comply with lending standards, a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association, a Board member, an Owner or of any other person handling the funds of the Association (including a managing agent, a management company and its employees who control or dispense the funds of the Association), in such amount as the Board shall deem desirable on the exercise by the Board of its best business judgment, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments, plus reserves in the custody of the Association, managing agent or management company. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain an endorsement and/or waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression by virtue of being non-salaried board members, volunteers, association managers, or any other persons with access to assets but not technically "employees." Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association.

(c) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association prior to the expiration date of such policies and shall be assessed as Common Expenses.

(d) Annual Review of Policies. All policies for insurance shall be reviewed annually by the Board to determine whether the coverage contained in the policies is sufficient to make any and all necessary repairs or replacement of the property which may have been damaged or destroyed.

(e) Waiver of Subrogation. Each Person as a condition of accepting title and/or possession of a Dwelling Unit and the Association agree for themselves, and



their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

#### Section 6.4 - Original Declarant's Rights

During the Class "B" Control Period, the Original Declarant shall exercise all or any of the powers, rights, duties and functions of the Association, including, without limitation, the right to levy special assessments as authorized herein, the right to enter into a management contract, the right to obtain insurance under Original Declarant's blanket policy (if any), the right to perform each duty and obligation of the Association set forth herein, the right to collect assessments and disburse all funds of the Association, and the right to have a lien (and to foreclose said lien) on a Dwelling Unit for unpaid assessments in the manner and to the extent granted to the Association as herein provided.

#### Section 6.5 - Enforcement of Covenants

The Association shall take all actions reasonably necessary under the circumstances to enforce the covenants and restrictions set forth in Article VII hereof. The City and the County shall each have the right, but not the obligation, to enforce the covenants and restrictions in the same capacity as the Association.

### ARTICLE VII COVENANTS AND RESTRICTIONS

The intent of this Declaration is to cause the Property to be well kept and maintained. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owners, Land Contract Vendees, Lessees, Tenants and Occupants of the Property. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent. The Association, acting through its Board, shall have standing and the power to enforce such standards.

### Section 7.1 - Minimum Area Requirements

(a) **Ranch Homes.** No single-story home (ranch) shall be constructed which is less than eighteen hundred (1,800) square feet of gross floor area, which area calculation excludes the area of the garage, any porch(es), and basement (including finished basements).

(b) **Colonial and One and One-Half Story Homes.** No home with a second story (Colonial and other such designs) or half-story living area above the ground floor level shall be constructed which is less than twenty-four hundred (2,400) square feet of gross floor area, which area calculation excludes the area of the garage, any porch(es), and basement (including finished basements).

### Section 7.2 - Garages

All homes shall have a minimum two-car front or side-loaded attached garage.

### Section 7.3 - Architectural

(a) **Roofs.** Homes constructed in a traditional architectural style shall have pitched roofs of a minimum 6:12 slope. Homes constructed in a modern architectural style may have any pitch roof, including flat roofs.

(b) **Finish Materials.** For traditional architectural style homes, stone or brick to grade may only be installed on the front elevation. Homes constructed in a modern architectural style may have a smooth poured concrete finish.

Twenty percent (20%) stone veneer is required for traditional architectural style homes. For homes constructed in a modern architectural style, stone veneer may be replaced with premium vinyl siding (vertical or other), however, in such event the entire front façade must then be premium siding (see, for reference, modern farmhouse design).

### Section 7.4 - Trailers, Sheds and Temporary Structures

(a) No temporary building, shed, trailer, recreation vehicle, garage, tent, or any similar structure shall be used, temporarily or permanently, as a residence or office on any part of the Property at any time. Subject to City regulations, Declarant shall have the right to maintain a temporary trailer on the Property.

(b) The finish materials of permitted sheds and other outbuildings must match the finish materials of the home on the Sublot on which they are located.

#### Section 7.5 - Fences

No chain link fences shall be permitted. Any and all fences may only be white vinyl privacy or black metal ornamental.

#### Section 7.6 - Mailboxes

The Declarant installs mailboxes in its discretion and in accordance with the rules and regulations established by the appropriate governmental authorities, including the United States Postal Service (the "USPS"). With regard to the Subdivision, there may be cluster box units (CBU) (but only if required by the USPS) which are utilized as central mailboxes for each Sublot. Mailboxes or cluster box units will be installed at the discretion of the Declarant (with approval from the USPS), including the location, design, size, type, color and style.

#### Section 7.7 - Grading and Drainage

No person shall change the grade on any portion of the Property without first obtaining the consent of the Board. In addition, any changes to the grading or drainage on the Property must also be submitted to, and reviewed and approved by, the City. No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City, County or other governmental authority having jurisdiction shall have the right (but not the obligation) to enter upon areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property.

#### Section 7.8 - Compliance with City, County or other Government Codes

Each Owner shall comply with all City, County, and other governmental requirements. It is agreed that a violation of any such requirements or any restriction, condition, covenant or restriction imposed now or hereafter by the provisions of this Declaration is a nuisance per se that can be abated by the Association or such governmental authority.

**Section 7.9 - Violation of this Article**

(a) If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design criteria, the Declarant (as long as the Declarant is a Class "B" Member of the Association) or the Board shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

(b) Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Declarant and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Declarant and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Declarant contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' fees. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstance be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Bylaws entitled, "Hearing Procedure," a Person in violation of this Article VII shall be obligated to the Association and/or Declarant for money damages and for the full amount of all costs and expenses, including attorneys' fees, incurred to remedy any such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be deemed "delinquent," and shall, upon perfection as provided in § 9.1, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

**ARTICLE VIII**  
**ASSESSMENTS**

**Section 8.1 - Definition of Assessments**

As used in this Declaration, Assessments shall mean all of the costs and expenses incurred by the Association in the exercise of its obligations with respect to the Areas of Common Responsibility, including, without limitation:

(a) All expenditures required to fulfill the responsibilities of the Association, including, but not limited to, expenditures relating to maintenance fees;

(b) All amounts incurred in collecting Assessments, including all legal and accounting fees;

(c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;

(d) The annual obligation to The Maypine Farm Estate Subdivision Homeowners' Association, Inc., as detailed in § 8.5(d), for the Association's contribution to the entryway maintenance; and

(e) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

**Section 8.2 - Responsibility for Payment of Assessments**

(a) All Owners of Sublots (other than the Declarant) shall be responsible for paying Assessments levied against such Sublots; provided, however, notwithstanding any other provision set forth herein, a Builder shall not be responsible for paying Assessments until the Dwelling Unit located on the applicable Sublot is conveyed from the Builder to a third-party Owner that will occupy or lease the Dwelling Unit contained thereon. Subject to the provisions of § 8.5, the Declarant or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments, which shall be equal as to each Sublot and shall equal to the amount of such annual budget divided by the number of Sublots subject to Assessment. Written notice of the Assessments shall be sent to the Owner of each Sublot. Payment of Assessments may be required by the Declarant or Board on a monthly, quarterly, semi-annual or annual basis.

(b) During the Class "B" Control Period, the Declarant shall determine the Assessments to be paid by the Owners, subject however to the limitations set forth in § 8.5.

(c) An Eligible Mortgage Holder acquiring title to all or any portion of the Property as a result of: (i) a foreclosure sale; or (ii) a deed in lieu of foreclosure, shall not be responsible for the Declarant's obligation for payment of the Common Expenses which are not covered by the annual Assessments payable by Owners of Dwelling Units during the Class "B" Control Period. After the Class "B" Control Period, the amount of Assessments attributable to Dwelling Units shall be established by the Board as of January 1 of each year, and each Owner of a Dwelling Unit shall pay an equal amount of such Assessments.

#### Section 8.3 - Creation of the Lien and Personal Obligation of Assessments

Each Owner of any Sublot (other than the Declarant) 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, (2) special Assessments for capital improvements, and (3) additional Assessments, all such Assessments to be established and collected as hereinafter provided. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Sublot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

#### Section 8.4 - Purpose of Assessments

The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and Occupants of the Property, for the improvement and maintenance of the Areas of Common Responsibility, and as is otherwise consistent with the rights and responsibilities of the Association hereunder and for the benefit of the Members.

#### Section 8.5 - Maximum Annual Assessments / Special Assessments

(a) From and after January 1 of the year immediately following the conveyance of the first Dwelling Unit to an Owner, the maximum annual Assessment each year shall be four hundred dollars (\$400.00) per Dwelling Unit and it may not be increased more than ten percent (10%) above the maximum Assessment for the previous year without a vote of at least fifty-one percent (51%) of the Class "A"

Members (excluding the Declarant). A lesser approval is acceptable if the action is taken by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose in accordance with § 8.6 below.

(b) In addition to the annual Assessments authorized herein, 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 Areas of Common Responsibility, including fixtures and personal property related thereto, and/or to meet any other emergency or unforeseen expenses of the Association, provided that any such special Assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose in accordance with § 8.6 below.

(c) Special Assessments shall be due as provided by the Board.

(d) Included in the annual assessment detailed in § 8.5(a) is an annual assessment of one hundred dollars (\$100.00) per Dwelling Unit (the total annual sum owed by the Association being two thousand one hundred dollars (\$2,100.00)), which is required to be paid to The Maypine Farm Estate Subdivision Homeowners' Association, Inc. as and for the Association's contribution to the maintenance of the front entryway landscaping at the corner of Maypine Boulevard and Miner Road. This sum is owed in perpetuity, however, it is not subject to increase. Neither the Association nor any Owner has any legal rights or interests in this entryway, it's maintenance instead being one of intangible mutual benefits. The Maypine Farm Estate Subdivision Homeowners' Association, Inc. shall have sole responsibility and control over the entryway.

#### Section 8.6 - Notice and Quorum for any Action Authorized Under §§ 8.1(d) and 8.5

Written notice of any meeting called for the purpose of taking any action authorized under § 8.5 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) 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 the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

### Section 8.7 - Uniform Rate of Assessment

Both annual and special Assessments must be fixed at a uniform rate for all Dwelling Units and may be collected on a monthly, quarterly, semi-annual or annual basis, or other periodic basis not more often than monthly or less often than annually as determined by the Board.

### Section 8.8 - Date of Commencement of Annual Assessments: Due Dates

The annual Assessment provided for herein shall commence as to Dwelling Units on the first date of the month following the conveyance to an Owner of the first Dwelling Unit. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment against each Dwelling Unit 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.

The Association, shall, upon demand, and for a reasonable charge, furnish a Certificate of Compliance in the form of Exhibit "C" of this Declaration signed by an officer of the Association setting forth the amount of the Assessment on a specified Dwelling Unit and setting forth whether the Assessment has been paid. A properly executed Certificate of Compliance of the Association as to the status of Assessments on a Sublot is binding upon the Association as of the date of its issuance.

### Section 8.9 - 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 fifteen percent (15%) per annum (not to exceed the highest interest rate chargeable to individuals under applicable law) and shall be subject to the remedies available to the Association as set forth in § 9.1 this Declaration. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien against the Owner's Sublot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his/her Sublot. Failure to pay any Assessment(s) shall not constitute default under an insured Mortgage.

### Section 8.10 - Subordination of the Lien to Mortgages

The lien of the Assessments provided for herein shall be subordinate to the lien of any recorded first mortgage. The sale or transfer of a Dwelling Unit shall not affect the Assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to



mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of record for such Assessments as to payments which become due prior to such sale or transfer.

**Section 8.11 - No Exemption for Non-Use; No Refund of Reserves**

An Owner not otherwise exempt from the Assessments may not exempt him or herself from liability for Assessments levied against them by abandonment of such Owner's Dwelling Unit. Furthermore, no Owner shall be entitled to any portion of the funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

**Section 8.12 - Non-Liability of Foreclosure Sale Purchaser for Past Due Assessments**

Where the mortgagee of a first mortgage of record acquires an Ownership Interest as a result of foreclosure of the mortgage or an acceptance of a deed in lieu of foreclosure, such mortgagee, its successors and assigns, shall not be liable for the Assessments levied against the Owner of such Ownership Interest prior to the acquisition of the Ownership Interest. The Owner or Owners of an Ownership Interest prior to the judicial sale thereof shall be and remain personally liable, jointly and severally, for the Assessments accruing against the judicially sold Ownership Interest prior to the date of the judicial sale as provided in § 9.3, but any unpaid part of the Assessments shall be assessed and levied against all of the Owners, including the Owner of the Ownership Interest foreclosed, his/her successors or assigns, at the time of the first Assessment next following the acquisition of title by such mortgagee, its successors and assigns.

**Section 8.13 - Liability for Assessments on Voluntary Conveyance**

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his/her Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in § 8.8 of this

**Declaration.** The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article IX.

#### Section 8.14 - Additional Assessments

If the Assessments shall for any reason prove to be insufficient to cover the actual expenses incurred by the Association, the Association shall, at such time as it deems it necessary and proper, levy an additional assessment (the "Additional Assessment") against the Owners of Dwelling Units. Each such Owner shall pay an equal share of each such Additional Assessment as if the Additional Assessment were part of the original Assessment.

### ARTICLE IX LIENS

#### Section 9.1 - Perfection of Lien

(a) If any Owner shall fail to pay an Assessment or Additional Assessment levied in accordance with this Declaration (such Owner hereinafter referred to as the "Delinquent Owner") when due and such Assessment or Additional Assessment is delinquent, or if an Owner shall violate any rule or breach any restriction, covenant or provision contained in the Declaration or Bylaws, the Board may authorize the perfection of a lien on the Ownership Interest of the delinquent and/or violating Owner by filing for record with the Recorder of the County, a Certificate of Lien. The Certificate of Lien shall be in recordable form and shall include the name of the delinquent Owner, a description of the Ownership Interest of the delinquent Owner, the entire amount claimed for the delinquency and/or violation, including interest thereon and Costs of Collection, and a statement referring to the provisions of this Declaration authorizing the Certificate of Lien. The lien is a continuing lien upon the Dwelling Unit against which each Assessment or charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, Enforcement Assessments, collection costs, attorney's fees, paralegal fees and court costs.

(b) In addition, the Board may file a lien against a Sublot for costs of maintenance, repair or replacement incurred by the Association due to the willful or

negligent act of an Owner or Occupant of a Sublot, or their family, tenants, guests or invitees, together with Costs of Collection.

#### Section 9.2 - Duration of Lien

Said lien shall remain valid for a period of five (5) years from the date of filing of said Certificate of Lien, unless sooner released or satisfied in the same manner provided by law for the release or satisfaction of mortgages on real property or discharged by the final judgment or order of a court in action to discharge such lien. A lien may be renewed by a subsequent filing of a certificate of lien prior to the expiration of the five (5) year period referred to above.

#### Section 9.3 - Priority

A lien perfected under this Article IX shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgagees against Dwelling Units. A lien perfected pursuant to this Article may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association after authorization from the Board. In any such foreclosure action, the affected Owner shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner or Declarant's Ownership Interest in excess of a first mortgage lien, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

#### Section 9.4 - Dispute as to Assessment

Any Owner who believes that an Assessment levied by the Association against him/her for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the provisions contained in § 12.8 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged. In such action, if it is finally determined that the unpaid amount of the Assessment or charge was improperly charged to the Owner, the court shall enter an order that it determines to be just which may provide for a discharge of record of all or a portion of the lien and an award of attorney's fees to the Owner.

**Section 9.5 - No Waiver Implied**

The creation of a lien upon an Ownership Interest owned by a delinquent Owner shall not waive, preclude or prejudice the Association for pursuing any and all other remedies granted to it elsewhere in this Declaration, whether at law or in equity.

**Section 9.6 - Personal Obligations**

The obligations created pursuant to this Article IX shall be and remain the personal obligations of the delinquent Owner until fully paid, discharged or abated and shall be binding on the heirs, personal representatives, successors and assigns of such delinquent Owner.

**ARTICLE X**  
**REMEDIES OF THE ASSOCIATION**

**Section 10.1 - Denial of Voting Rights, Use of Recreation Facilities (if any) and Discontinuance of Certain Services**

If any Owner fails to pay an Assessment when due, such Owner and the Occupants of any and all of such Owner shall not be entitled to vote on Association matters or to receive certain services from the Association until said Assessment is paid in full.

**Section 10.2 - Specific Remedies**

The breach of any restriction, covenant or provision contained in this Declaration or in the Bylaws, shall give the Association, the Original Declarant and their designated agent the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Dwelling Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration or the Bylaws and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect

costs of suit and reasonable attorneys' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under § 10.3 hereof.

#### Section 10.3 - Cost of Collection

If any Owner fails to pay any Assessment when due or upon delinquency in the payment of any sums or cost due under this Declaration, the Association may pursue any or all of the following remedies, which remedies shall be in addition to any other remedy available in this Declaration, or at law or in equity:

(a) Sue and collect from such Owner the amount due and payable, together with interest thereon as provided in this Declaration and Costs of Collection (hereafter defined).

(b) In addition to the amount referred to in (a) above, the Association may assess against such Owner, an administrative fee, not to exceed fifteen percent (15%) of the amount of the delinquency or One Hundred Dollars (\$100), whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said administrative fee shall be in addition to interest and the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and filing fees. The actual expenses of collection and the administrative fee shall hereinafter be referred to as "Cost of Collection."

(c) Foreclose a lien filed in accordance with Article IX of this Declaration in the same manner as provided by the laws of the State of Ohio for the foreclosure of real estate mortgages.

#### Section 10.4 - Application of Payments

The Association shall credit any amount it receives from an Owner in the following order:

- (i) To interest owed the Association.
- (ii) To administrative late fees or Enforcement Assessments owed the Association.
- (iii) To Cost of Collection.

(iv) To the oldest principal amounts the Owner owes the Association for Common Expenses chargeable to the Dwelling Unit or Sublot.

#### Section 10.5 - Binding Effect

The remedies provided in this Article X against a Delinquent Owner may also be pursued against the heirs, executors, administrators, successors and assigns and grantees of such Owner, except as specifically provided in §§ 8.12 and 8.13 of this Declaration.

#### Section 10.6 - Special Ohio Provisions

(a) Pursuant to Ohio Revised Code § 5312.12(C)(1), in any foreclosure action that the holder of a lien commences, the holder shall name the Association as a defendant in the action. The Association or the holder of the lien is entitled to the appointment of a receiver to collect rental payments due on the property. Any rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the Common Expenses chargeable to the Sublot during the foreclosure action.

(b) Pursuant to Ohio Revised Code § 5312.12(C)(3) a mortgage on a Sublot may contain a provision that secures the mortgagee's advances for the payment of the portion of the Common Expenses chargeable against the Sublot upon which the mortgagee holds the mortgage.

### ARTICLE XI TRANSFER OF SPECIAL DECLARANT RIGHTS

#### Section 11.1 - Instrument Transferring Special Declarant Rights

A Declarant may transfer Special Declarant Rights created or reserved in this Declaration or in the Bylaws by an instrument evidencing the transfer recorded in the land records of the County in which the Property is located. The instrument is not effective unless executed by both the transferor and transferee.

#### Section 11.2 - Liability of Transferor of Special Declarant Rights

(a) If the successor to any Special Declarant Right is an Affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which related to the Property.

(b) If a transferor retains any Special Declarant Rights but transfers other Special Declarant Rights to a successor who is not an Affiliate of the Declarant, the transferor is also liable for any obligations and liabilities relating to the retained Special Declarant Rights imposed on a Declarant by the Declaration or Bylaws arising after the transfer.

(c) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an Affiliate of the transferor.

#### Section 11.3 - Acquisition of Special Declarant Rights

Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of such mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Dwelling Units owned by the Declarant in the Property, the Person acquiring title to all the Dwelling Units being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his/her request, succeeds to all Special Declarant Rights related to such Dwelling Unit, or only to any rights reserved in the Declaration and/or Bylaws to maintain models, sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

#### Section 11.4 - Termination of Special Declarant Rights

Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale of any Dwelling Units owned by the Declarant in the Property; (1) the Declarant ceases to have any Special Declarant Rights, and (2) the right of the Declarant to elect or designate Board Members pursuant to the Bylaws terminates unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by the Declarant to a successor Declarant.

#### Section 11.5 - Liabilities of a Transferee of Special Declarant Rights

The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:

(a) A successor to any Special Declarant Right who is an Affiliate of a Declarant is subject to all obligations and liabilities imposed on the transferor by the Declaration and Bylaws.

(b) A successor to any Special Declarant Right, other than a successor described in paragraphs (c) or (d) of this subsection, who is not an Affiliate of a Declarant, is subject to all obligations and liabilities imposed by the Declaration and Bylaws: (i) on a Declarant which relate to such Declarant's exercise or non-exercise of Special Declarant Rights; or (ii) on the transferor, other than: (A) misrepresentations by any previous Declarant; (B) warranty obligations on improvements made by any previous Declarant, or made before this Declaration is recorded; (C) breach of any fiduciary obligation by any previous Declarant or appointees to the Board of Directors; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only Special Declarant Rights reserved in the Declaration and/or Bylaws to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a Declarant, may not exercise any other Special Declarant Right (except as specifically designated by the Declarant), and is not subject to any liability or obligation as a Declarant.

(d) A successor to all Special Declarant Rights held by the transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to sublots or Dwelling Units under Subsection (b), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Dwelling Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the Bylaws for the duration of the period that a Declarant has the right to elect or designate Board Members, and any attempted exercise of this rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this Subsection, such successor Declarant is not subject to any liability or obligation as a Declarant.

#### Section 11.6 - Limitation on Liability of Transferee of Special Declarant Rights

Nothing in this Article subjects any successor to a Special Declarant Right to any claims against or other obligations of a transferor Declarant, other than claims and obligations arising under this Declaration or the Bylaws.



**ARTICLE XII**  
**GENERAL PROVISIONS**

**Section 12.1 - Covenants Run with the Property; Binding Effect**

All of the Easements, Covenants and Restrictions which are imposed upon, granted and/or reserved in this Declaration constitute Easements, Covenants and Restrictions running with the Property and are binding upon every subsequent transferee of all or any portion thereof, including, without limitation, grantees, Tenants, Owners and Occupants.

Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Declaration, whether or not the same incorporates or refers to this Declaration, covenants for himself/herself, his/her heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of this Declaration and to incorporate said Declaration by reference in any deed, lease or other agreement of all or any portion of his/her interest in any real property subject hereto.

**Section 12.2 - Notices**

(a) Any notices required to be given to any Person under the provisions of this Declaration shall be deemed to have been given when personally delivered to such Person's Dwelling Unit or mailed, postage prepaid, to the last known address of such Person or principal place of business if a corporation, or other business entity, provided, however, that a notice of "delinquency" of any payment due hereunder shall be made by personal delivery to such Dwelling Unit or principal place of business if a corporation, or by certified or registered mail, return receipt requested, or by e-mail (if authorized by a Member). The effective date of such a notice shall be the date said notice is personally delivered, or postmarked, or the date of confirmation or receipt of an e-mail, as the case may be.

(b) Notices to the Declarant shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Grappa Farms, LLC (Declarant), 9124 Tyler Boulevard, Mentor, Ohio 44060, with a copy to Joseph P. Szeman, Esq., Hennig, Szeman & Klammer Co., L.P.A., 8500 Station Street, Suite 245, Mentor, Ohio 44060.

### Section 12.3 - Enforcement-Waiver

Enforcement of the provisions of this Declaration may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages and against the Person, or to enforce any lien perfected pursuant to this Declaration. The failure by the Association or anyone permitted by this Declaration to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The County and the City shall each have the right, but not the obligation, to enforce the provisions of this Declaration.

### Section 12.4 - Construction of the Provisions of this Declaration

The Declarant or the Association, as applicable, shall have the right to construe and interpret the provisions of this Declaration and in the absence of an adjudication by arbitrator(s) or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Persons or property which benefit or which are bound by the provisions hereof. Any conflict between any construction or interpretation of the Declarant or the Association and that of any Person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation by the Declarant or Association, as the case may be.

### Section 12.5 - Reservations by Original Declarant - Exempt Property

(a) Original Declarant reserves the right and easement for itself and Owners of nearby lands to whom Original Declarant, in Original Declarant's sole discretion, may grant the same, the right and easement to tie into, use, repair, maintain and replace without charge any and all common lines, pipes, utilities, conduits, ducts, wires, cables and rights-of-way in, on, or over the Property or any part thereof that will not materially interfere with the use or operation of a building or structure or other improvement thereon, in connection with the development and/or operation of real property. Any damage to buildings, improvements and real estate (including landscaping, if any) caused thereby shall be promptly repaired and restored to its prior condition by the party to whom such right and easement had been granted.

(b) Original Declarant hereby reserves the right to grant to or enter into any easements for the installation, maintenance, service or operation of any and all common lines, pipes, utilities, conduits, ducts, wires, cables and rights-of-way in, on, or over the Property or any part thereof that will not materially interfere with the use or operation of

a building, structure or other improvement thereon. Any damage caused thereby shall be promptly repaired and the land shall be restored to its prior condition.

(c) Original Declarant reserves the right to enter into easements with any utility or public authority which Original Declarant believes, in its sole discretion, to be in the best interests of the development of the Property.

(d) Original Declarant reserves the right to perform or cause to be performed such work as is incident to the completion of the development and improvement of the Property, owned or controlled by the Original Declarant, notwithstanding any covenant, easement, restriction or provision of this Declaration or its exhibits, which may be to the contrary.

(e) Original Declarant reserves the right to impose, reserve or enter into additional covenants, easements and restrictions with grantees of Dwelling Units and Sublots as long as such additional easements, covenants and restrictions are not in conflict with the rights, duties and obligations of Owners as set forth in this Declaration.

(f) Each reservation, right and easement specified or permitted pursuant to this Article shall include the right of ingress and egress for the full utilization and enjoyment of the rights reserved and/or granted herein. The word "common" as used in this paragraph shall mean any and all lines, pipes, utilities, conduits, ducts, wires, cables and rights-of-way intended for the use of or used by more than one Owner. Any easements or rights referred to in this Article, whether granted by Original Declarant prior to the filing of this Declaration or subsequent thereto, shall at all times have priority over the provisions of this Declaration and any lien created under this Declaration.

(g) So long as Declarant is a Class "B" Member, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

#### Section 12.6 - Assignability by Original Declarant

The Original Declarant, and its successors, shall have the right from time to time to assign all or any part of its rights as a Declarant under this Declaration (but not the rights expressly conferred upon the Original Declarant), provided that the deed or other

writing selected by Original Declarant, in Original Declarant's sole discretion, shall expressly state that the rights of a Declarant shall be assigned. Any such assignment may provide that said assignee shall have the rights of a Declarant (other than those rights reserved by the Original Declarant in any such assignment) set forth in this Declaration with respect to the Dwelling Units and/or real property owned by such designee.

#### Section 12.7 - Severability

Invalidation of any one of the easements, covenants, restrictions or provisions contained herein shall in no way affect any other provision which shall remain in full force and effect.

#### Section 12.8 - Litigation

(a) No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the vote of seventy-five percent (75%) of the Class "A" Members, and, during the Class "B" Control Period, the Class "B" Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to real estate taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

(b) Pursuant to Ohio Revised Code § 5312.13, the Association and all Owners, Occupants, tenants, and other persons lawfully in possession and control of any part of an Ownership Interest shall comply with any covenant, condition, and restriction set forth in any recorded document to which they are subject, including this Declaration and the Bylaws, as lawfully amended. Any violation is grounds for the Association or any Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

(c) Pursuant to Ohio Revised Code § 5312.14, in any action relating to any right, duty, or obligation possessed or imposed upon the Association by statute or otherwise, the Association may sue or be sued as a separate legal entity. Service of summons or other process may be made upon the Association by serving the process

personally upon the president of the Board or the Person named as statutory agent of the Association. Any action brought by or on behalf of the Association shall be pursuant to authority granted by the Board.

#### Section 12.9 - Validity of Mortgages

No violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property.

#### Section 12.10 - Amendment of Declaration

Except as expressly provided to the contrary in this Declaration, this Declaration may be amended as follows:

(a) For so long as the Declarant or a successor designated by the Declarant is the Owner of a fee simple interest in the Property, the Original Declarant shall be entitled from time to time to amend or modify any of the provisions of this Declaration or to waive any of the provisions, either generally or with respect to particular portion of the Property, if in its judgment, the development or lack of development of the Property requires such amendment, modification or waiver, or if in its judgment the purposes of the general plan of development of the Dwelling Units will be better served by such amendment, modification or waiver, provided no such amendment, modification or waiver shall materially and adversely affect the value of existing Dwelling Units or shall prevent a Dwelling Unit from being used by the Owner in the same manner that said Dwelling Unit was used prior to the adoption of said amendment, modification or waiver. To amend or modify the Declaration in accordance with this paragraph, Original Declarant shall file a supplement to this Declaration setting forth the amendment or modification, which supplement need not be but shall, at Original Declarant's request, be executed by the Association and all Owners of real property within the Property. Each such Owner, by accepting a deed to his/her Dwelling Unit or other real property, hereby appoints Original Declarant his/her attorney-in-fact, coupled with an interest, to execute on his/her behalf any such amendments. Each amendment or modification shall be effective when signed by the Original Declarant and filed for record with the Recorder of the County.

(b) This Declaration may also be amended or modified by Original Declarant or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government

National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, ordinance, rule or regulation or any judicial determination; or (6) correcting obvious factual errors within this Declaration and other documents governing the Property and correcting any inconsistencies between this Declaration and other documents governing the Property, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof; or (8) complying with the requirements of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Ohio Environmental Protection Agency. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Original Declarant to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Declarant shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by Original Declarant and shall be effective upon the filing of the Subsequent Amendment with the County.

(c) Original Declarant shall have the right to amend this Declaration at any time and from time to time during the Class "B" Control Period.

(d) Except as expressly provided in this Declaration, and after expiration of the period set forth in (a) of this Article, any provision of this Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the Act or other statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in

Article III of this Declaration shall not be amended (except as expressly provided in this Declaration) unless all Persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Declarant in this Declaration shall not be effective without the prior written consent of Declarant; and provided further, no amendment may increase the financial burden of an Owner without the prior written consent of such Owner. Written notice shall be given each Member at least ten (10) days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Declarant if the amendment affects the rights of the Declarant, and filed for record with the County.

(e) The vote of at least sixty-seven percent (67%) of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least fifty-one percent (51%) of the votes of Dwelling Units subject to mortgages appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following: (1) voting rights; (2) Assessments, Additional Assessments, Assessment liens, or priority assessment liens; (3) reserves for maintenance, repair, and replacement of the Areas of Common Responsibility; (4) responsibility for maintenance and repair; (5) insurance or fidelity bonds; (6) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; (7) expansion or contraction of the Property; or (8) any provisions included in this Declaration, Bylaws, or Articles which are for the express benefit of Eligible Mortgage Holders on Sublots.

(f) No amendment shall limit any right granted to the City in this Declaration without the consent of the City.

(g) A vote to terminate the applicability of this Declaration and to dissolve the Association requires the unanimous consent of Owners, however, no such vote shall be of any legal effect if dissolution violates the provisions of § 5.1 of this Declaration.

#### Section 12.11 - Interest Rates

After this Declaration shall have been recorded for five (5) years or more, the Board shall have the right to change any interest rate or late payment charge referred to herein by majority vote, but in no event shall said interest rate or late payment charge exceed the highest interest rate chargeable to individuals under applicable law.

**Section 12.12 - Headings**

The heading of each Article and of each Section in this Declaration is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Declaration or in any way affects this Declaration.

**Section 12.13 - Gender**

The use of the masculine gender herein or in the Bylaws shall be deemed to include the feminine and neutral genders, as the case may be, and the use of singular shall be deemed to include the plural, wherever the context so requires.

**Section 12.14 - Liberal Interpretation**

The provisions of this Declaration shall be liberally interpreted to effectuate its purpose of the development and operation of a first-class residential community.

**Section 12.15 - Rule Against Perpetuities**

If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Joseph R. Biden, Jr., President of the United States of America, and Kamala D. Harris, Vice President of the United States of America.

GRAPPA FARMS, LLC

By:   
George E. Davis, III, Managing Member



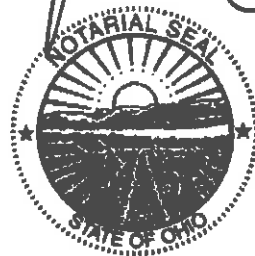
STATE OF OHIO            )  
                                      )  
COUNTY OF LAKE        )        ss.

No oath or affirmation was administered to the signer with regard to the notarial act.

On this 19<sup>th</sup> day of September, 2022 before me, a Notary Public in and for said County and State, personally appeared, George E. Davis, III, and in his capacity as Managing Member of Grappa Farms, LLC, the individual who executed the foregoing instrument and acknowledged that the same is his free and voluntary act and deed and that of Grappa Farms, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC



JENNA CARTER  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
May 21, 2023

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**Situated in the City of Highland Heights, County of Cuyahoga, and State of Ohio, and known as being part of Lot 4 of original Mayfield Township, further known as being Parcel A as shown by the Plat of Lot Split and Consolidation recorded in A.F.N. 202202110630 of Cuyahoga County Records and containing 19.5441 acres (851,343 S.F.) of land as appears by said Plat, be the same, more or less, but subject to all legal highways and easements of record.**

**Permanent Parcel No.: 821-14-036**

**Instrument Reference No.: 202203100452 of Cuyahoga County Records  
(recorded 03/10/2022)**

**EXHIBIT "B"**

**PLAT**





EXHIBIT "C"

CERTIFICATE OF COMPLIANCE AND  
STATUS OF ASSESSMENTS WITH RESPECT TO  
THE RESALE OF A DWELLING UNIT  
AT GRAPPA FARMS SUBDIVISION  
HIGHLAND HEIGHTS, CUYAHOGA COUNTY, OHIO

Grappa Farms Homeowners' Association, Inc., a non-profit Ohio corporation (the "Association"), created to govern, operate, control and administer the "Areas of Common Responsibility" for Grappa Farms Subdivision, Highland Heights, Cuyahoga County, Ohio and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Grappa Farms Subdivision (the "Declaration") hereby certifies as follows:

1. The Association has received notice of a proposed sale of the Dwelling Unit located on Sublot No. \_\_\_\_\_, located at \_\_\_\_\_, Highland Heights, Cuyahoga County, Ohio.
2. The proposed purchaser(s) of the Dwelling Unit is (are) \_\_\_\_\_.
3. The owner(s) of the Dwelling Unit (is) (are) \_\_\_\_\_.
4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except \_\_\_\_\_ (if none, write "None").
5. The current annual assessment attributable to the Dwelling Unit is \$ \_\_\_\_\_.
6. The assessments are payable at the rate of \$ \_\_\_\_\_ per (month) (quarter) (annual); said assessments being payable through \_\_\_\_\_ 20\_\_\_\_.
7. A fee is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.
8. This Certificate of Compliance is being issued per § 8.8 of the Declaration.

GRAPPA FARMS  
HOMEOWNERS' ASSOCIATION, INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

EXHIBIT "D"

CODE OF REGULATIONS (BYLAWS)  
OF  
GRAPPA FARMS  
HOMEOWNERS' ASSOCIATION, INC.

CODE OF REGULATIONS (BYLAWS)  
OF  
GRAPPA FARMS  
HOMEOWNERS' ASSOCIATION, INC.

Article I  
Name, Principal Office, and Definitions

1.1 Name. The name of the Association is GRAPPA FARMS HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association").

1.2 Principal Office. The principal office of the Association will be located in Highland Heights, Cuyahoga County, Ohio.

1.3 Definitions. Capitalized terms used in this Code of Regulations ("Bylaws") shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for Grappa Farms Subdivision, Highland Heights, Cuyahoga County, Ohio (the "Declaration").

Article II  
Association: Meetings, Quorum, Voting, Proxies

2.1 Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B" ("Members"), as more fully set forth in the Declaration, the terms of which pertaining to memberships are specifically incorporated herein by reference.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors (the "Board") of the Association either on the Property or as convenient thereto as possible and practical.

2.3 Annual Meetings. The first annual meeting of the Members shall be held within one hundred twenty (120) days after the termination of the Class "B" Membership in accordance with § 5.2(b)(2) of the Declaration, and each subsequent annual meeting shall be held at 7:00 p.m. on the same day of the same month of each year thereafter, unless the Board designates a different date. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

2.4 Special Meetings. The President of the Association may call special meetings. In addition, after the Declarant is no longer a Class "B" Member, it shall be



the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by holders of at least one-fourth (1/4th) of all of the votes of the Class "A" Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**2.5 Notice of Meetings.** A written or printed notice stating the place, day, and time of any meeting of the Members shall be delivered, either personally or by mail, or by e-mail if authorized in writing by a Member, to each Member entitled to vote at such meeting, at least fifteen (15) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting. Such notice shall specify the place, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered three (3) days after it is deposited in the United States mail addressed to the Class "A" Member at his address as it appears on the records of the Association, or supplied by such Member to the Association for the purpose of notice, with postage thereon prepaid.

**2.6 Waiver of Notice.** Waiver of notice of meeting by a Class "A" Member shall be deemed the equivalent of proper notice. Any Class "A" Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Class "A" Member, whether in Person or by proxy, shall be deemed a waiver by such Class "A" Member of notice of the time, date, and place thereof, unless such Class "A" Member or specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**2.7 Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Class "A" Members who are present at such meeting, either in Person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Class "A" Members in the manner prescribed for regular meetings.

The Class "A" Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the

withdrawal of enough Class "A" Members to leave less than a quorum, provided that at least ten (10%) percent of the voting power of the Association remains present in Person or by proxy.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

2.9 Proxies. At all meetings of Members, each Class "A" Member may act or vote in Person or by proxy. The Person appointed as proxy need not be a Member of the Association. Designation by a Member or Members of a proxy to vote or act on his behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the Person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the Member or Members making such designation and shall automatically cease upon conveyance by the Member of his/her Sublot. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the Person appointing a proxy does not revoke the appointment.

2.10 Majority. As used in these Bylaws, the term "majority" shall mean those votes totaling more than fifty (50%) percent of the total number.

2.11 Quorum. Unless otherwise set forth in the Declaration, the presence in Person or by proxy of at least twenty percent (20%) of the voting power of each of the Class "A" and Class "B" Members of the Association shall constitute a quorum at all meetings of the Association except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. Any provision in the Declaration concerning quorums is specifically incorporated herein. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

2.12 Conduct of Meetings. The president shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

2.13 Action Without a Meeting. Any action required by law to be taken at a meeting of the Class "A" Members or any action which may be taken at a meeting of the Class "A" Members may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Class "A" Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Class "A" Members.

**Article III**  
**Board of Directors: Number, Selection, Term of Office**

3.1 **Number.** During the Class "B" Control Period specified in § 5.2(b)(2) of the Declaration, the affairs of this Association shall be managed by a Board of three (3) Directors who need not be Members of the Association. After the termination of the Class "B" Membership and in accordance with Article V, § 5.3 of these Bylaws, the Members shall elect all three (3) Directors. Members or spouses of Members may be elected as Directors; provided, however, no single Dwelling Unit shall be represented on the Board by more than (1) Person at the same time. If a Member is a corporation, partnership, limited liability company, trustee or other artificial entity, a certificate signed by such Member shall be filed with the Secretary of the Association naming such Director (or if there is no Secretary, then with the Person conducting the meeting), which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association.

3.2 **Term of Office.** Prior to the termination of the Class "B" Control Period, the Class "B" Member shall elect one (1) Director for a term of one (1) year, and two (2) Directors for a term of two (2) years; and at each annual Meeting thereafter the Class "B" Member shall elect one (1) or two (2) Directors, as the case may be, for a term of two (2) years. After the termination of the Class "B" Control Period, the Members shall elect one (1) Director, for a term of three (3) years; one (1) Director, for a term of two (2) years; and one (1) Director for a term of one (1) year. At each annual meeting thereafter, the Members shall elect one (1) Director, as the case may be, for a term of three (3) years.

3.3 **Compensation.** No Director shall receive compensation for any service he/she may render to the Association. However, any Director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

**Article IV**  
**Nomination and Election of Directors**

4.1 **Nomination.** Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairperson, who shall be a Member of the Board, and two (2) Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members.

**4.2 Election Inspectors.** At each meeting at which Board members are to be elected, after nominations to the Board, but prior to the election of such Board members, the Members of the Association shall elect two Members of the Association to serve as Election Inspectors at the meeting to examine the ballots cast, to count the votes and to announce the names of the Members elected to Board positions. The Election Inspectors shall not be nominees (or spouses of nominees) for election to the Board.

**4.3 Election.** Notwithstanding any other provision contained herein:

(a) At the first annual meeting of the membership after the termination of the Class "B" Control Period specified in § 5.2(b)(2) of the Declaration, the Class "A" Members shall elect all three (3) Directors. Immediately prior to such election, all Persons previously elected or appointed by the Declarant, shall resign; provided, however, that such Persons shall be eligible for reelection to the Board. The terms of office of the Directors elected by the Class "A" Members shall be in accordance with Article III, § 3.2 of these Bylaws.

(b) At any election of Directors, each Class "A" Member shall be entitled to cast one (1) equal vote with respect to each vacancy to be filled. The candidates receiving the largest number of votes shall be elected. Such election shall be by written secret ballot whenever requested by a Member of the Association; but unless the request is made, the election may be conducted in any manner approved at such meeting. The Directors elected by the Class "A" Members shall hold office until their respective successors have been elected by the Association. The Directors may be elected to serve any number of consecutive terms. The Persons so elected shall take office upon such election.

**4.4 Removal of Directors and Vacancies.** A Director who was elected solely by the votes of Class "A" Members other than the Declarant may be removed from office, with or without cause, prior to the expiration of his/her term only, by the vote of a majority of the voting power of Class "A" Members other than the Declarant. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected by the Class "A" Members entitled to elect the Director so removed to fill the vacancy for the remainder of the term of such Director.

Any Director elected by the Class "A" Members who has three (3) consecutive unexcused absences from meetings of the Board or who is delinquent in the payment of any Assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation

of a Director, a vacancy may be declared by the Board, and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term of the Director who vacated the position.

## Article V Meetings of Directors

5.1 Regular Meetings. Regular meetings of the Board shall be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

5.4 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Meetings may be conducted by any method of communication including electronic or telephonic communication, provided all members of the Board can hear or read in real time and participate and respond to every other member of the Board.

5.5 Closed Meetings. Pursuant to Ohio Revised Code § 5312.04(F), no Owner other than a Director may attend or participate in any discussion or deliberation of a meeting of the Board unless the Board expressly authorizes that Owner to attend or participate.

5.6 Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

5.7 Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members of the Board, and such consent shall have the same force and effect as a unanimous vote.

5.8 Non-Discrimination by Board. The Board shall comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry, including, but not limited to, Chapter 4112 of the Ohio Revised. No private right of action additional to those conferred by the applicable state and federal anti-discrimination laws is conferred on any aggrieved individual by the preceding sentence.

Article VI  
Powers, Limitation on Powers and Duties of the Board

6.1 Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Class "A" Members.

In addition to powers specified in the Declaration, including the powers set forth in § 5.4 of the Declaration, and in addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) suspend the voting rights and the receipt of Association services of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association;

(b) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a Member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board;

(d) select by a majority vote a successor Director in the event of death, resignation or removal of a Director. A successor Director shall serve for the unexpired term of his/her predecessor;

(e) hire and fire attorneys, accountants and other independent professionals that the Board determines are necessary or desirable in the management of the Association;

(f) prepare and adopt an annual budget in which there shall be established the contribution of each Owner to the Common Expenses. The budget shall include reserves in an amount adequate to repair or replace major capital items in the normal course of operations without the necessity of special assessments, unless Owners, exercising not less than a majority of the voting power of the Association, waive the reserve requirement annually;

(g) making Assessments to defray the Common Expenses, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment;

(h) providing for the operation, care, upkeep, and maintenance of all of the Areas of Common Responsibility;

(i) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may only be deposited in investments that meet standards for fiduciary investments under the laws of the state of Ohio;

(j) opening of bank accounts on behalf of the Association and designating the signatories required in accordance with Article VII, § 7.9 of these Bylaws;

(k) making or contracting for the making of repairs, additions, and improvements to or alterations of the Areas of Common Responsibility in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(l) enforcing by legal means the provisions of the Declaration and these Bylaws and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(m) obtaining and carrying insurance against casualties and liabilities (including directors and officers liability insurance to the extent reasonably available), as provided in the Declaration, and paying the premium cost thereof;

(n) paying the cost of all services rendered to the Association or its Members and not chargeable directly to individual Owners;

(o) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices;

(p) making available to any prospective purchaser of a Dwelling Unit or a vacant Sublot, any Owner of a Dwelling Unit or a vacant Sublot, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Dwelling Unit or vacant Sublot, current copies of the Declaration, the Articles, these Bylaws, and all other books, records, and financial statements of the Association. The Association or the management company selected by the Association may impose a reasonable charge for the foregoing in order to defray duplication costs;

(q) entering into easement agreements, leases, license agreements and other agreements with utility companies (both private and public), with Owners, and with the owners of neighboring properties;

(r) borrowing money from time to time for the purpose of improving, maintaining, repairing and replacing the Areas of Common Responsibility, and secure said financing without the approval of the Class "A" Members with an assignment of Assessments, including Additional Assessments and future Assessments in accordance with § 5.4(a) of the Declaration;

(s) granting or obtaining or dedicating to public use easements and rights-of-way (i) for access and for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer be signed by two-thirds (2/3rds) of the Members has been recorded.

(t) such other rights as conferred by Ohio Revised Code Chapters 5312 and 1702 that do not conflict with the provisions of the Declaration or these Bylaws.

6.2 Limitation on Powers; Right of Declarant to Disapprove Actions. This Section may not be amended without the express, written consent of the Class "B" Member during the Class "B" Control Period.



During the Class "B" Control Period, the Class "B" Member shall have a right at its sole discretion to disapprove actions of the Board, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof in accordance with the Declaration, which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall have the right to make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have the right to disapprove any action, policy, or program authorized by the Board or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within thirty (30) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditures required to comply with applicable laws and regulations.

6.3 Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is required in writing by one-fourth (1/4) of the Class "A" Members who are entitled to vote;

(b) as more fully provided in the Declaration, to:

(i) fix the amount of the annual Assessment against Sublots at least thirty (30) days in advance of each annual Assessment period;

(ii) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each annual Assessment period; and

(iii) foreclose the lien against any Sublot for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(c) issue, or to cause an appropriate officer to issue, upon demand by any Person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(d) pursuant to § 6.3 of the Declaration, procure and maintain adequate liability and hazard insurance on property owned by the Association and adequate officers and directors indemnity insurance and cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(e) cause the Areas of Common Responsibility to be maintained;

(f) establish, levy, assess and collect all Assessments referred to or authorized in the Declaration; and

(g) enter into easement agreements, license agreements and other agreements with utility companies (both private and public), with Owners within the Property and with owners of neighboring properties.

#### Article VII Officers and Their Duties

7.1 Enumeration of Offices. The officers of the Association shall be a President and Vice-President, who shall at all times be Members of the Board, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

7.3 Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his successor is elected and

has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

7.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

7.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same Person. No Person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to this Article.

7.8 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred by or imposed by the Board. The offices and powers and duties of the officers are as follows:

(a) President: The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, deeds, and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act; and shall exercise and discharge such other duties as may be required of him/her by the Board.

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

7.9 Agreements, Contracts, Deeds, Easements, Leases, Checks. All agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association authorized by the Declaration or the Act, shall be executed by any two (2) officers of the Association or by such other Person or Persons as may be designated by resolution of the Board.

#### Article VIII Finances of Association (Assessments)

8.1 Preparation of Estimated Budget. On or before the filing with the Cuyahoga County Fiscal Officer of the Declaration, and on or before December 15 of each year thereafter, the Association shall prepare a preliminary estimated budget of the total amount necessary to pay the Assessments referred to in Article VIII of the Declaration for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. Within 45 days of the date of the preliminary estimate, the Association will prepare a final estimated budget and shall notify each Member in writing as to the amount of such estimates, and shall send a copy of such notice to each holder of a first mortgage upon the Ownership Interest of a Member who has made a request in writing for such notification. The failure of the Association to comply strictly with the above time requirements shall not be deemed to be a waiver and shall not prevent the Association from collecting Assessments. The net of the aggregate amounts of such estimates (herein called the "Estimated Cash Requirements") of the next calendar year shall be assessed to those Members required to pay the Assessments according to and as specifically set forth in Article VIII of the Declaration. Each Member required to pay Assessments shall pay to the Association or as it may direct, the Assessment made pursuant to this Section on or before the first day of each calendar year, except that the Board may elect to collect annual Assessments semi-annually, quarterly, or monthly, in advance. On or before the date of each annual meeting, the Association shall furnish to all Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant

to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the last maturing monthly installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata to the next installment due after the rendering of the accounting.

In addition to such regular monthly assessments, each Class "A" Member shall be required to make, at the time such Member acquires title to a Sublot, an initial capital contribution to the Association of up to an amount equal to one (1) year of the estimated annual Assessment for Common Expenses for each Sublot purchased one-half (1/2) of said sum shall be held by the Association in the Association's working capital account and the balance of said sum shall be held by the Association as a reserve for contingencies and replacements. The general purpose of this contribution is to provide the Association with funds for working capital and/or contingency reserve purposes. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and organization, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or an advance, is not refundable and shall not be required of the Declarant, but only from those Persons who purchase a Sublot from the Declarant.

Notwithstanding the provisions of this Section, the Board shall have the authority to establish payment of Assessments, quarterly or semi-annually or annually (rather than monthly).

**8.2 Reserve for Contingencies and Replacements; Special Assessments.** The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If the "Estimated Cash Requirements" proves inadequate for any reason, including nonpayment of any Member's Assessment, the deficiency and any extraordinary expenditures in excess of the reserves therefor shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable by the date and upon the terms stated in the notice, which date shall be not less than ten (10) days after the delivery or mailing of such notice of further Assessment.

**8.3 Failure to Prepare Annual Budget.** The failure or delay of the Association to prepare or deliver to a Member any annual or adjusted estimate shall not constitute a waiver or release in any manner of such Member's obligation to pay his share of the Assessments, as herein provided, whenever the same shall be determined, and in the

absence of any annual estimate or adjusted estimate, the Member required to pay Assessments pursuant to § 8.2 of the Declaration shall continue to pay the current charge at the existing rate established for the previous period until the Association mails or delivers notice of the new payment due as a result of the determination of the new annual or adjusted estimate.

8.4 Books and Records of the Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any Member or his representative duly authorized in writing, at such reasonable time or times during normal business hours as may be requested. Upon ten (10) days' notice to the Board and payment of a reasonable fee established by the Board, any Member shall be furnished a statement of such Member's account setting forth the amount of any unpaid Assessments or other charges due and owing.

8.5 Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to § 8.2 of the Declaration.

8.6 Depository. The depository of the Association shall be such bank or banks and/or such savings and loan associations and/or such money market fund(s) as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of the monies from such accounts shall be only by a check signed by two Persons who are authorized by the Board.

8.7 Annual Review. The books of the Association shall be reviewed once a year by the Board and such review shall be completed prior to each annual meeting. If requested by a majority of the members of the Board, such review shall be made by a certified public accountant. In addition and at any time requested by Members or by holders of first mortgages on Ownership Interests possessing in the aggregate fifty percent (50%) or more of the voting power in the Association, the Board shall cause an additional review to be made at the expense of the requesting party.

9.8 Remedies for Failure to Pay Assessments. If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association shall have all of the remedies set forth in the Declaration, in the Bylaws or at law or equity to collect such Assessments and all costs associated therewith.

Article X  
Hearing Procedure; Compliance and Non-Monetary Default

10.1 Enforcement. In the event of a violation by any Member or any Tenant or other Occupant of a Dwelling Unit (other than the nonpayment of Assessments or charges, which are governed by Articles IX and X of the Declaration) of any of the provisions of the Declaration or the Bylaws, the Association shall make a reasonable effort to notify the Member and any Tenant or other Occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after the date of such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Member or Tenant or other Occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after the date of the written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Association or such committee may, at its option:

(a) Impose an Enforcement Assessment against the Member or Tenant or other Occupant as provided in this Section; and/or

(b) Commence an action to enforce performance on the part of the Member or Tenant or other Occupant, and to require the Member to correct such failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or

(c) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to twenty percent (20%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

(d) Commence an action to recover damages or any other remedy available at law or in equity.

10.2 Enforcement Assessments. The amount of any Enforcement Assessment shall be a reasonable amount as determined in the sole discretion of the Board. Prior to imposing any fine, the Member or Tenant or other Occupant shall be afforded an opportunity for a hearing after making a reasonable effort to provide a written notice to the Member or Tenant or other Occupant of not less than ten (10) days, which notice

shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration or these Bylaws which have allegedly been violated, (iii) a short and plain statement of the matters asserted by the Association, (iv) the amount of the proposed charge or Enforcement Assessment, (v) a statement that the Owner has the right to a hearing before the Board to contest the proposed Enforcement Assessment, (vi) a statement setting forth the procedure to request a hearing, and (vii) a statement that the Owner has the right to cure the violation in accordance with § 10.1 above. Prior to the effectiveness of any sanction hereunder, proof of notice of the mailing or attempted delivery, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and attempted manner of delivery is entered by the officer, Board Member, or agent who attempted delivery of such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The Member or Tenant or other Occupant shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Member or Tenant or other Occupant. The Board shall set any time limitations for all written and oral arguments or presentations by any Persons appearing at the hearing(s). The Board shall not levy an Enforcement Assessment before holding a hearing pursuant to this Section. If the Member or Tenant or other Occupant fails to attend the hearing as set by the Board, the Member or Tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or Tenant or other Occupant. Within thirty (30) days following a hearing at which the Board imposes an Enforcement Assessment, the Board shall deliver a written notice of the Enforcement Assessment to the Owner. Any Enforcement Assessment imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the Enforcement Assessment, or if a hearing is timely requested, within ten (10) days after written notice of the Board's decision at the hearing. Any Enforcement Assessment levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable. If any Enforcement Assessment is levied against a Tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the Tenant as hereinafter provided. The Association shall have the right to offset the deposit made to the Association in accordance with the Declaration. Any written notice that this Section requires shall be delivered to the Owner or Occupant of the Dwelling Unit by personal delivery, by certified mail, return receipt requested, or by regular mail. The Association shall have the right to file a Certificate of Lien for in accordance with Article IX of the Declaration.



**10.3 Negligence.** A Member shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement cost rendered necessary by his/her act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance (i.e., such as the insurance deductible) carried by the Association.

**10.4 Responsibility of Members for Tenants.** Each Member shall be responsible for the acts and omissions, whether negligent or willful, of his/her Tenant, and for all employees, agents and invitees of the Member or any such Tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Areas of Common Responsibility, or any liability to the Association, the Member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance (i.e., insurance deductibles) carried by the Association. Furthermore, any violation of any of the provisions of the Declaration or these Bylaws, by any Tenant, or any employees, agents or invitees of a Member or any Tenant of a Dwelling Unit, shall also be deemed a violation by the Member, and shall subject the Member to the same liability as if such violation was that of the Member.

**10.5 Costs and Attorney's Fees.** In any legal proceedings commenced by the Association to enforce the Declaration or these Bylaws, as said documents may be amended from time to time, the Association or committee shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees. Any such costs or attorneys' fees awarded to the Association or committee in connection with any action against any Member shall be charged to the Member.

**10.6 Declarant Assessments for Legal Expenses.** Declarant shall not be required to pay any assessments or monies to finance any claim or litigation against Declarant.

**10.7 No Waiver of Rights.** The failure of the Association or a committee or any Member to enforce any covenant, restriction or any other provision of the Declaration or these Bylaws, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

**10.8 Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration or these Bylaws, or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees incurred by the Association in so acting to enforce such rights.

Article XI  
Indemnification

Each member of the Board and each officer of the Association, and each former member of the Board and officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him/her in connection with the defense of any pending, threatened or completed action, suit or proceeding, criminal, civil, administrative, or investigative, to which he/she is or may be made a party by reason of his/her being or having been such member of the Board or officer of the Association (whether or not he/she is a member or officer at the time of incurring such costs and expenses), unless such Board member or officer (or former Board member or officer) failed to act in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal proceeding, he/she had no reasonable cause to believe his/her action was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction shall not create, of itself, a presumption that the Person did not act in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, a presumption that the Person had reasonable cause to believe that his/her conduct was unlawful. The determination of whether the Board member's or officer's conduct failed to qualify for indemnification shall be made either by (1) the opinion of independent counsel selected by the Association, (2) by a majority vote of the disinterested members of the Board of the Association, or (3) a majority vote of the disinterested members of a meeting of the Association at which a quorum of Members are present in Person or by proxy. The phrase "disinterested members" shall mean all members of the Board or of the Association other than (i) any member of the Board or officer of the Association who is a party to or threatened with such action, suit or proceeding; (ii) any corporation or organization of which such member of the Board or officer referred to in (i) above owns of record or beneficially ten percent (10%) or more of any class of voting securities; (iii) any firm of which such member of the Board or officer referred to in (i) above is a partner or member; and (iv) any spouse, child, parent, brother or sister of any such member of the Board or officer referred to in (i) above. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such member of the Board or officer and shall not be exclusive of other rights to which any member of the Board or officer may be entitled to or granted pursuant to § 1702.12(E) of the Ohio Revised Code, as a matter of law, or under the Declaration, Articles, these Bylaws, any vote of Association members or any agreement.

**Article XII**  
**Amendments to this Code of Regulations**

Prior to the sale and conveyance of the first Dwelling Unit, Declarant may unilaterally amend these Bylaws. After such sale and conveyance, the Declarant may unilaterally amend these Bylaws so long as it owns any portion of the Property or adjacent lands for development and so long as the amendment has no material adverse effect upon the rights of any Member. Thereafter and otherwise, unless the Declaration requires a different percentage, these Bylaws may be amended only by the affirmative vote or written consent of Class "A" Members representing a majority of the voting power of the Association, which shall include a majority of votes of Members other than the Declarant or, where the two-class voting structure is still in effect, shall include the Class "B" Member and a majority of the voting power of the Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment to these Bylaws is effective until filed in the office of the Cuyahoga County Fiscal Officer.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of an Eligible Mortgage Holder or impair the rights granted to an Eligible Mortgage Holder herein without the prior written consent of such Eligible Mortgage Holder.

**Article XIII**  
**Miscellaneous**

13.1 **Fiscal Year**. The initial fiscal year of the Association shall be set by resolution of the Board.

13.2 **Parliamentary Rules**. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Ohio law, the Articles, the Declaration, or these Bylaws.

13.3 **Conflicts**. If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and these Bylaws, the mandatory provisions of Ohio law, the Declaration, the Articles, and these Bylaws (in that order) shall prevail.

#### 13.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and these Bylaws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any mortgagee, Member of the Association, or by his/her duly appointed representative at any reasonable time and for a purpose reasonably related to his/her interest as a Member at the office of the Association or at such other place within the Property as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Limitations on Inspections by Owners. Unless approved by the Board, an Owner may not examine or copy any of the following from books, records, and minutes:

- (i) Information that pertains to personnel matters;
- (ii) Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or related matters;
- (iii) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (iv) Information that relates to the enforcement of the Declaration or the Bylaws against other Owners;
- (v) Information, the disclosure of which is prohibited by state or federal law.

(d) Inspection by Members of the Board. Every Member of the Board shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Member of the Board includes the right to make extracts and copies of documents at the expense of the Association.

13.5 Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by regular

U.S. mail or by certified U.S. mail, return receipt requested, first class postage prepaid or by Federal Express or another nationally recognized courier that guarantees next day delivery and provides a receipt:

- (i) if to a Member, or at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Dwelling Unit of such Member; or
- (ii) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

#### 13.6 Owner Information.

(a) Owner Information. Within thirty (30) days after an Owner obtains an Ownership Interest, the Owner shall provide the following information in writing to the Association through the Board:

- (i) The home and business mailing addresses, and home and business telephone numbers of the Owner and all Occupants of the Dwelling Unit; and/or
- (ii) The name, business address and business telephone number of any Person who manages the Owner's Dwelling Unit as an agent of that Owner.

(b) Change of Information. Within thirty (30) days after a change in any of the information that (a) of this Section requires, an Owner shall notify the Association, through the Board, in writing, of the change. When the Board requests, a Unit Owner shall verify or update the information.


13.7 Headings. The heading of each Article and of each Section in these Bylaws is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of these Bylaws or in any way affects these Bylaws.

13.8 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by these Bylaws shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death

of the survivor of the now living descendants of Joseph R. Biden, Jr., President of the United States of America, and Kamala D. Harris, Vice President of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, being the Declarant and sole Class "A" Member of the Association, has caused these Bylaws to be duly adopted on or as of the 19<sup>th</sup> day of September, 2022.

GRAPPA FARMS  
HOMEOWNERS' ASSOCIATION, INC.,  
an Ohio not-for-profit corporation

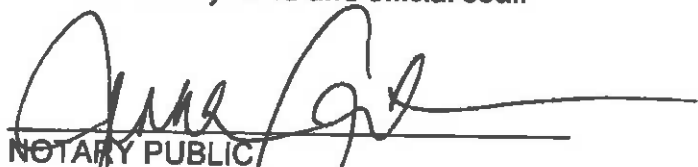
By:   
George E. Davis, III  
in his capacity as Managing Member  
of Grappa Farms, LLC,  
Declarant and sole Class "A" Member

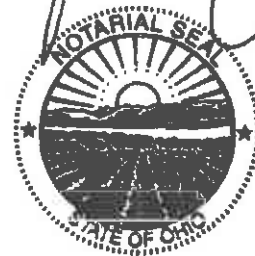
STATE OF OHIO            )  
  )  
COUNTY OF LAKE        )        ss.

No oath or affirmation was administered to the signer with regard to the notarial act.

On this 19<sup>th</sup> day of September, 2022 before me, a Notary Public in and for said County and State, personally appeared, George E. Davis, III, and in his capacity as Managing Member of Grappa Farms, LLC, the individual who executed the foregoing instrument and acknowledged that the same is his free and voluntary act and deed and that of Grappa Farms, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC



JENNA CARTER  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
May 21, 2023

THIS INSTRUMENT PREPARED BY:

Joseph P. Szeman, Esq.  
Hennig, Szeman & Klammer Co., L.P.A.  
8500 Station Street, Suite 245  
Mentor, Ohio 44060