

PPN:

DECL - 202405160346

PGS: 9

05/16/2024 02:23 PM

AMT: \$0.00

RCPT#: 20240516000317

CONV: \$0.00

PAID BY: KAMAN & CUSIMANO

*Robert Chambers*  
CUYAHOGA COUNTY FISCAL OFFICE

AMENDMENTS TO THE DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

MACINTOSH FARMS CONDOMINIUM NO. 2

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR MACINTOSH FARMS CONDOMINIUM NO. 2 RECORDED AT VOLUME 95-02546, PAGE 53 ET SEQ. OF THE CUYAHOGA COUNTY RECORDS.

**AMENDMENTS TO THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
MACINTOSH FARMS CONDOMINIUM NO. 2**

**RECITALS**

- A.** The Declaration of Condominium Ownership for Macintosh Farms Condominium No. 2 (the "Declaration") and the Bylaws of MacIntosh Farms Condominium No. 2 Owners' Association, Inc., Exhibit B of the Declaration (the "Bylaws"), were recorded at Cuyahoga County Records Volume 95-02546, Page 53 et seq.
- B.** Ohio Revised Code Section 5311.05(E)(1)(c) authorizes the Board of Directors (the "Board"), without a vote of the Unit Owners, to amend the Declaration "to bring the Declaration into compliance with this Chapter."
- C.** The Board approved the following matters to be modified (the "Amendments") to bring the Declaration into compliance with Ohio Revised Code Chapter 5311 ("Chapter 5311").
- D.** Each of the changes set forth in these Amendments are based on or in accordance with Chapter 5311.
- E.** Attached as Exhibit A is a certification of the Association's President and Secretary stating that the Amendments were approved by the Board in accordance with Ohio Revised Code Section 5311.05(E)(1)(c).
- F.** The proceedings necessary to amend the Declaration and Bylaws as permitted by Chapter 5311 and the Declaration have in all respects been complied with.

**AMENDMENTS**

The Declaration of Condominium Ownership for Macintosh Farms Condominium No. 2 is amended by the Board of Directors as follows:

- (1) INSERT a NEW PARAGRAPH to the end of DECLARATION ARTICLE XVII, SECTION (B).** Said new addition to the Declaration, as amended at Instrument No. 200507250099, is:

**The Board will impose the following enforcement procedure for  
levying enforcement assessments:**

(1) Prior to imposing a charge for damages or an enforcement assessment, the Board will give the Unit Owner a written notice, which may be in the form of electronic mail to an electronic mail address previously provided by the Unit Owner in writing, that includes:

(a) A description of the property damage or violation;

(b) The amount of the proposed charge or assessment;

(c) A statement that the Unit Owner has a right to a hearing before the Board to contest the proposed charge or assessment;

(d) A statement setting forth the procedures to request a hearing;

(e) A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

(2) Hearing Requirements:

(a) To request a hearing, the Unit Owner must deliver a written notice to the Board not later than the tenth day after receiving the notice required above. If the Unit Owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board may immediately impose a charge for damages or an enforcement assessment.

(b) If a Unit Owner timely requests a hearing, at least seven days prior to the hearing the Board will provide the Unit Owner with a written notice that includes the date, time, and location of the hearing.

(c) The Board will not levy a charge or assessment before holding a properly requested hearing.

(3) The Board may allow a reasonable time to cure a violation described above before imposing a charge or assessment.

(4) Within 30 days following a hearing at which the Board imposes a charge or assessment, the Association will deliver a written notice of the charge or assessment to the Unit Owner.

(5) The Association will deliver any written notice required above to the Unit Owner or any occupant of the Unit by personal delivery, by electronic mail, by certified mail, return receipt requested, or by regular mail.

(2) MODIFY the 1st SENTENCE of the 1st PARAGRAPH of DECLARATION ARTICLE V, SECTION (D). Said modification to the Declaration, as amended at Instrument No. 200507250099, is: (new language is underlined)

The Association shall have the right to place a continuing lien upon the estate or interest in any Unit of the owner thereof and his percentage of interest in the Common Elements for the payment of the portion of the Common Expenses chargeable against such Unit which remains unpaid for ten (10) days after such portion has become due and payable by filing a certificate therefor with the Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board of Directors of the Association.

(3) INSERT a NEW PARAGRAPH to the end of BYLAWS ARTICLE V, SECTION 6. Said new addition to the Bylaws is:

The Association, as determined by the Board, is not required to permit the examination and copying of any of the following from books, records, or minutes that contain any of the following:

- (a) Information that pertains to Condominium Property-related personnel matters;
- (b) Communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property-related matters;
- (c) 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;
- (d) Information that relates to the enforcement of the Declaration, Bylaws, or Association rules against a Unit Owner;

- (e) Information the disclosure of which is prohibited by state or federal law; or
- (f) Records that date back more than five years prior to the date of the request.

(4) MODIFY the LAST SENTENCE of BYLAWS ARTICLE II, SECTION 1. Said modification to the Bylaws is: (deleted language is crossed out; new language is underlined)

~~No single Unit may be represented on the Board by more than one (1) person at any time~~ The majority of the Board will not consist of Unit Owners or representatives from the same Unit unless authorized by a resolution adopted by the Board of Directors prior to the Board majority being comprised of Unit Owners or representatives from the same Unit.

(5) INSERT a NEW BYLAWS ARTICLE II, SECTION 15 entitled "Actions in Writing Without a Meeting." Said new addition to the Bylaws is:

Section 15. Actions in Writing Without a Meeting. In lieu of conducting a meeting, the Board may take action with the unanimous written consent of the Directors. Those written consents will be filed with the Board meeting minutes.

(6) INSERT 3 NEW ITEMS (9), (10), and (11) to DECLARATION ARTICLE XII, SECTION (B). Said new additions to the Declaration are:

... (9) to designate a successor to the person named to receive service of process for the Association. If the Association is incorporated in Ohio, this may be accomplished by filing with the Secretary of State an appropriate change of statutory agent designation, or (10) to delete as void, any provision within the Declaration or Bylaws, or in any applicable restriction or covenant, that prohibits, limits the conveyance, encumbrance, rental, occupancy, or use of property subject to Revised Code Chapter 5311 on the basis of race, color, national origin, sex, religion, or familial status, or (11) to permit notices to Unit Owners, as required by the Declaration or Bylaws, to be sent by electronic mail and, if returned undeliverable, by regular mail, provided the Association has received the prior, written authorization from the Unit Owner...

(7) MODIFY BYLAWS ARTICLE II, SECTION 10(i)(i). Said modification to the Bylaws, as amended at Instrument No. 200507250099, is: (deleted language is crossed out; new language is underlined)

(i) Commence, defend, intervene in, settle, or compromise any civil, criminal, land use planning or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, or that involves two or more Unit Owners, impacts zoning, or otherwise—and relates to matters affecting the Condominium Property;

(8) INSERT a NEW PARAGRAPH to the end of DECLARATION ARTICLE XIX, SECTION H. Said new addition to the Declaration, as amended at Instrument No. 200402260035, is:

In addition, notices may be delivered using electronic mail subject to the following:

(1) The Association may use electronic mail or other transmission technology to send any required notice only to Unit Owners, individually or collectively, who have given the Association written consent to the use of electronic mail or other transmission technology. Any Unit Owner who has not given the Association written consent to use of electronic mail or other transmission technology will receive notices by either regular mail or hand delivered.

(2) An electronic mail or transmission technology to a Unit Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or transmission is not delivered or effective, the Association will deliver the notice or other communication to the Unit Owner by either regular mail or hand delivered.

(9) MODIFY the 1st SENTENCE of BYLAWS ARTICLE V, SECTION 3. Said modification to the Bylaws is: (new language is underlined)

The Association shall be obligated to build up and maintain a reasonable working capital reserve fund to finance the cost of repair or replacement of the components of the Common Elements in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless the Unit Owners, exercising not less than a majority of the voting power of the Association, waive the reserve requirement in writing annually.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of the above amendments. The invalidity of any part of the above provision will not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of these amendments, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

The MacIntosh Farms Condominium No. 2 Owners' Association, Inc. has caused the execution of this instrument this 24<sup>th</sup> day of April, 2024.

**MACINTOSH FARMS CONDOMINIUM NO. 2 OWNERS' ASSOCIATION, INC.**

By: *Douglas Niemeyer*  
DOUGLAS NIEMEYER, President

By: *Beverly Mularchik*  
BEVERLY MULARCHIK, Secretary

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS

**BEFORE ME**, a Notary Public, in and for the County, personally appeared the above-named MacIntosh Farms Condominium No. 2 Owners' Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on page 7 of 9, and that the same is the free act and deed of the corporation and the free act and deed of them personally and as such officers.

I have set my hand and official seal this 24<sup>th</sup> day of April, 2024.

  
NOTARY PUBLIC

Place notary stamp/seal here:



This instrument prepared by:  
**KAMAN & CUSIMANO, LLC**  
Attorneys at Law  
50 Public Square, Suite 2000  
Cleveland, Ohio 44113  
(216) 696-0650  
ohiocondolaw.com



EXHIBIT A

CERTIFICATION OF OFFICERS

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS

**Douglas Niemeyer** and **Beverly Mularchik**, being the duly elected and acting President and Secretary of the MacIntosh Farms Condominium No. 2 Owners' Association, Inc., certifies that the Amendments were approved by the Board in accordance with Ohio Revised Code Section 5311.05(E)(1)(c).

*Douglas Niemeyer*  
**DOUGLAS NIEMEYER, President**

*B. Mularchik*  
**BEVERLY MULARCHIK, Secretary**

**BEFORE ME**, a Notary Public in and for the County, personally appeared the above-named **Douglas Niemeyer** and **Beverly Mularchik** who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

I have set my hand and official seal this 24<sup>th</sup> day of April, 2024.

*Nancy Anne Wargo*  
**NOTARY PUBLIC**

