STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS

In the Matter of Compelling Compliance with the Provisions of Section 305-a(1) of the Agriculture and Markets Law

ORDER

TO: The Town of Brookhaven
1 Independence Hill
Farmingville, NY 11738
Attn: Hon. Town Supervisor Ed Romaine

WHEREAS, the Department, upon receipt of Delea Sod Farm, Inc., ("Delea") Agriculture and Markets Law (AML) Section 305-a review request, has undertaken a review of the Town of Brookhaven Zoning Code and its administration as relates to Delea; and

WHEREAS, the Department found that Delea is a farm operation located within Suffolk County Agricultural District No. 3 and the Department has jurisdiction under AML 305-a; and

WHEREAS, the Department has conducted an investigation, including a site visit, and has reviewed submissions and correspondence and accompanying materials from the farm operation, its Counsel, John Armentano, Esq., and reviewed correspondence together with accompanying materials submitted by Robert Calica, Esq., Special Counsel for the Town of Brookhaven; and

WHEREAS, by its November 19, 2021 Interim Determination, and its Final Determination, dated September 14, 2022, the Department found that the Town of Brookhaven Zoning Code, and its administration, unreasonably restricts Delea's farm operation, which is located within a county adopted, State certified agricultural district; and

WHEREAS, the Town of Brookhaven did not submit information demonstrating any public health or safety threat in connection with the prohibition of the sale of mulch, compost and items incidental to the installation of sod; and

WHEREAS, the Department has issued its Final Determination, ruling that the Town of Brookhaven local law and its administration violate Section 305-a(1) of the Agriculture and Markets Law; it is hereby

ORDERED, pursuant to the provisions of Section 36 of the Agriculture and Markets Law, that the Town of Brookhaven immediately comply with the provisions of Section 305-a(1) of the Agriculture and Markets Law; and it is further

ORDERED, that this Order shall take effect immediately upon the service of a certified copy thereof on the Town Supervisor of the Town of Brookhaven; and it is further

ORDERED, that the Town of Brookhaven shall notify the Department within ten business days of the service of the Final Determination and Order whether the Order is accepted and will be obeyed.

Dated and Sealed this 22nd
day of November, 2022
at Colonie, NY

RICHARD A. BALL
Commissioner of Agriculture and
Markets of the State of New York