

**AMENDED AND RESTATED BYLAWS**

**OF**

**WINDY HILL FARMS HOMEOWNERS ASSOCIATION, INC.**

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**AMENDED AND RESTATED BYLAWS  
OF  
WINDY HILL FARMS HOMEOWNERS ASSOCIATION, INC.**

**WHEREAS**, Lumbermen's Investment Corporation, a Delaware corporation ("Declarant") prepared and recorded the Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms on or about November 24, 1999 as Document No. 99-0143301 at Volume 4550, Page 1731 *et seq.* of the Deed Records of Collin County, Texas (the "Declaration"); and

**WHEREAS**, the Bylaws of Windy Hill Farms Homeowners Association, Inc. were duly adopted by the Board of Directors of Windy Hill Farms Homeowners Association, Inc. ("the Association") on or about December 22, 1999 and recorded on or about March 30, 2005 as Document No. 2005-0039952 at Volume 05886, Page 03709 *et seq.* of the Deed Records of Collin County, Texas (the "Bylaws"); and

**WHEREAS**, the Bylaws were amended by that First Amendment to the Bylaws of Windy Hill Farms Homeowners Association, Inc. adopted on or about August 20, 2009 and recorded on or about October 2, 2009 as Instrument No. 20091002001223230 of the Deed Records of Collin County, Texas (the "First Amendment"); and

**WHEREAS**, Article XVI of the Bylaws provides for amendment of the Bylaws at a regular or special meeting of the Members by a vote of a majority, in the aggregate, of a quorum of Members present or by proxy; and

**WHEREAS**, a majority of a quorum of Members present in person or by proxy approved the following amendment and restatement of the Bylaws at a regular meeting of the Members held on \_\_\_\_\_, 2012.

**NOW, THEREFORE**, these Amended and Restated Bylaws of Windy Hill Farms Homeowners Association, Inc. (the "Amended and Restated Bylaws") are made to be effective the \_\_\_\_ day of \_\_\_\_\_, 2012, by the membership of Windy Hill Farms Homeowners Association, Inc. (the "Association").

**Article I**

**Name, Principal Office and Definitions**

Section 1.1. Name. The name of the Association shall be **WINDY HILL FARMS HOMEOWNERS ASSOCIATION, INC.** (the "Association").

Section 1.2. Principal Office. The principal office of the Association in the State of Texas shall be located in Collin. The Association may have such other offices, either within or outside the State of Texas, as the Board may determine or as the affairs of the Association may require.

Section 1.3. Definitions. The words used in these Bylaws shall be given their ordinary, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the

Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms (said Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall otherwise require.

## **Article II**

### **Association: Membership, Meetings, Quorum, Voting, Proxies**

Section 2.1. Membership. Each Owner of a Lot shall be a Member of the Association, as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are specifically incorporated herein by reference.

Section 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 the Board may designate.

Section 2.3. Annual Meetings. Annual meetings shall be set by the Board on a date and at a time set by the Board.

Section 2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of a majority of the Board or upon a petition signed by Members representing at least ten percent (10%) of the total votes of the Association.

Section 2.5. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally, by mail or by electronic mail, to each Member not less than ten (10) nor more than sixty (60) 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. Each Member must keep an updated electronic mail address registered with the Association.

In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. 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 when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid. If electronically mailed, the notice of a meeting shall be deemed to be delivered when the Association electronically transmits the notice to the Member's registered electronic mail address as it appears on the records of the Association.

Section 2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection

on the basis of lack of proper notice is raised before the business is put to a vote.

Section 2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, the Association may call such additional meeting(s), subject to the notice requirements set forth in Section 2.5, and the required quorum at such additional meeting(s) shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such reconvened meeting shall be held more than sixty (60) days following the first meeting.

The 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 Members to leave less than a quorum, provided that any action taken is approved by Members representing at least a majority of the votes required to constitute a quorum.

Section 2.8. Voting Rights. The voting rights of the Members shall be as set forth in the Declaration and these Bylaws, and the Declaration's voting rights provisions are specifically incorporated herein.

Section 2.9. Voting Methods. Members may vote in person, by proxy, by absentee ballot or by electronic ballot except as specifically provided otherwise in the Governing Documents. An electronic ballot means a ballot given by (i) electronic mail, (ii) facsimile, or (iii) posting on an Internet website, for which the identity of the Member can be confirmed and for which the Member may receive a receipt of the transmission and receipt of the Member's ballot. All proxies, absentee ballots and electronic ballots shall be in writing, dated, signed by the Member and filed with the Secretary or other person designated by the Board to receive proxies/ballots before the appointed time of each meeting. If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each Member that contains instructions on obtaining access to the website posting. Proxies and absentee ballots shall be deemed to have been filed upon the Secretary's or other designated person's receipt of the proxy/absentee ballot by mail, facsimile or hand delivery. Ballots cast electronically shall be deemed to have been filed upon the Secretary's or other designated person's receipt of the electronic ballot as evidenced by a facsimile confirmation receipt or an electronic transmission receipt. Electronic ballots must be filed at least three (3) hours prior to the time of the meeting. Electronic ballots which are electronically mailed from the Member's registered electronic mail address shall be deemed to be signed by the Member. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 2.10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, owners or other group, as the context may indicate, totaling more than fifty percent (50%) of the total number.

Section 2.11. Quorum. The presence in person, by proxy, by absentee ballot or by electronic ballot of Members representing at least one tenth (1/10) of the votes of all Members shall constitute a quorum at all regular and special meetings of the Association. Absentee or electronic ballots may be counted towards a quorum only for items appearing on the ballot.

Section 2.12. Conduct of Meetings. The President, or in his or her absence any Vice President or Secretary, 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 at the meeting.

Section 2.13. Action Without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by a sufficient number of Members as would be necessary to take that action at a meeting at which all of the Members were present and voted, and any such consent shall have the same force and effect as a unanimous vote of the Members. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force as a vote of Members at a meeting. Each written consent shall bear the date of the signature of each Member who signs the consent. For purposes of this section, absentee and electronic ballots may be counted as written consent. Within ten (10) days following authorization of any action by written consent, the Association shall give notice to all Members of the material features of the authorized action.

### **Article III**

#### **Board of Directors; Number, Powers, Meetings**

##### **A. Composition and Selection.**

Section 3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board, each of whom shall have one vote. Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time unless each spouse is a Member of the Association. In the case of a Member which is not a natural person, the person designated in writing to the Secretary of the Association as the representative of such Member shall be eligible to serve as a director. Members who have been convicted of a felony or crime involving moral turpitude may not serve as a Director.

Section 3.2. Number of Directors. The Board shall consist of five (5) directors, as provided in Section 3.4.

##### **Section 3.3. Nomination and Election Procedures.**

(a) Nominations. Nominations for election to the Board, if any, may be made from the floor or by written request of a Member to the Secretary or other person. Any Member whose nomination is received by the Secretary or other designated person or committee at least three (3) days prior to the delivery of the annual meeting notice, shall be included on the proxy/absentee ballot of the Association provided with the notice of the annual meeting. Any Member whose nomination is received after this period as well as any Member nominated from the floor at the annual meeting shall be included among the nominees running for election to the Board. A change in the list of nominees after the date that the annual meeting notice is sent shall not constitute an amendment to the motion to elect director(s). All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. The Board may adopt additional rules

governing the procedures for the nomination of directors.

(b) Election Procedures. Each Member may cast all votes attributed to the Lots which such Member represents for each vacancy to be filled. A candidate, or his or her parent, child, brother, sister, grandparent, grandchild, great grandparent, great grandchild, aunt, or uncle may not count the votes for an election. A person who is authorized to count votes may not disclose to any other person how a Member voted; provided, however, that in the event of a recount, the person conducting the recount may be provided access to the ballots for purposes of the recount. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled and who receive the greatest number of votes shall be elected. The directors elected by the Members shall hold office until the expiration of his or her term. Directors may be elected to serve any number of consecutive terms.

(c) Recount. A Member may request, in writing, a recount of the votes cast for the election of directors no later than the fifteenth (15<sup>th</sup>) day after the date of the election. Upon the Board's timely receipt of a written request for a recount, the Board shall engage the services of a person qualified to tabulate the votes. This person must (i) not be a Member of the Association or related to a Member of the Board; and (ii) be a current or former county judge, county elections administrator, justice of the peace, county voter registrar, or a person mutually agreed upon by the Board and the requesting Member. The Member requesting the recount shall pay, in advance, the cost of the recount, including any fees payable to the person performing the recount. If the recount results in a change in the candidates who are elected to the Board, the Association shall reimburse the requesting Member any costs so advanced. Any recount must be completed no later than the thirtieth (30<sup>th</sup>) day after the date which is the later of (i) the Board's receipt of the recount request, or (ii) the Board's receipt of the requesting Member's advance payment for costs. After the recount is completed, the Association shall provide written notice of the results of the recount to each member who requested the recount.

Section 3.4. Election and Term of Office. At each annual meeting, directors shall be elected for staggered terms with 2 directors being elected in odd-numbered years and 3 directors being elected in even numbered years. Directors shall hold office until their respective terms have expired. At the expiration of the term of office of each such member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

Section 3.5. Removal of Directors; Vacancies. Any director may be removed, with or without cause, by the vote of the Members holding a majority of the votes entitled to be cast for the election of such director. 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 Members to fill the vacancy for the remainder of the term of such director.

Any director who is convicted of a felony or crime involving moral turpitude shall be automatically disqualified from service on the Board, 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 to serve for the remainder of the term of such director. Alternatively, the Board may call for an election for the purpose of electing a successor to

fill any such vacancy on the Board. In such case, the Members shall be entitled to elect a successor to serve for the remainder of the term of such director.

B. Meetings.

Section 3.6. Organizational Meetings. The first meeting of the Board following each annual meeting of the Membership shall be held at such time and place as shall be fixed by the Board. The Board shall announce the actions taken at the organizational meeting, including the election of officers, at the next Board meeting and record those actions in the minutes of that meeting.

Section 3.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Regular meetings must take place in Collin County or in any county adjacent thereto. The notice shall be given to each director by one of the following methods: (i) by personal delivery; (ii) written notice by first-class mail, postage prepaid; (iii) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) by electronic mail, facsimile, computer, fiberoptics or other communication device. Notices given by personal delivery, telephone, text message, electronic mail or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 3.8. Special Meetings. Special meetings of the Board shall be held when called by written notice signed in person or electronically by the President or by any two (2) directors. The notice shall specify the date and time of the meeting, and if the meeting is held solely by using a conference telephone or other communication system, the location of the meeting, and the nature of any special business to be considered. Special meetings must take place in Collin County or in any county adjacent thereto. The notice shall be given to each director by one of the following methods: (i) by personal delivery; (ii) written notice by first-class mail, postage prepaid; (iii) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) by electronic mail, facsimile, computer, fiberoptics or other communication device. All such notices shall be given at the director's telephone number, facsimile number, registered electronic mail address, or sent to the director's address as shown on the records of the Association. Notices sent by first-class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, text message, electronic mail or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

Section 3.9. Notice to Members. Except as provided in Section 3.10, notice of the date, time, place, and general subject matter, including a general description of matters to be considered in executive session, of each Board meeting shall be given to each Member by one of the following methods: (i) by personal delivery of written notice; (ii) written notice by first-class mail, postage prepaid; (iii) by posting notice in a conspicuous manner in the community on the Common Area or

on privately-owned property with the property owner's consent **and** by electronic mail to each Member who maintains a registered electronic mail address with the Association; or (iv) by posting notice on a website, if any, maintained by or on behalf of the Association **and** by electronic mail to each Member who maintains a registered electronic mail address with the Association. It is each Member's duty to keep an updated electronic mail address registered with the Association at all times. All such notices shall be given at the Member's mailing address or registered electronic mail address as shown on the records of the Association. Notices sent by personal delivery or by first-class mail shall be delivered or sent at least ten (10) days before the date of the meeting but not more than sixty (60) days before the date of the meeting. Notices posted in the conspicuous community location or on the Association's website shall be posted at least seventy-two (72) hours before the start of the meeting. Notices given by electronic mail shall be transmitted at least seventy-two (72) hours before the time set for the meeting.

Section 3.10. Notice to Members Not Required. Notwithstanding the notice requirements of Section 3.9, and except as provided below, notice to Members is not required for Board meetings which are convened to consider the following matters: (i) emergencies requiring immediate Board action; or (ii) routine and administrative matters. In the event that the Board meets without notice to the Members and takes any action with respect to either (i) or (ii) above, the Board shall orally summarize the actions taken at the next Board meeting and record those actions in the minutes of that next meeting.

Notwithstanding this Section 3.10, notice to Members of Board meetings to discuss or act upon any of the following matters must be provided to the Members as provided in Section 3.9 even though the matter may be an emergency or a routine or administrative matter: (i) fines; (ii) damage assessments; (iii) initiation of foreclosure actions; (iv) initiation of enforcement actions (except actions that seek the issuance of a temporary restraining order or that relate to violations involving a threat to health or safety); (v) increases in assessments; (vi) levying of special assessments; (vii) appeals from a denial of architectural review approval; or (viii) a suspension of a right of a particular Member.

Section 3.11. Waiver of Notice. Notice of a Board meeting is not required to be given to a director or Member entitled to notice if the director or Member signs a written waiver of notice of the meeting either before or after the meeting. The waiver of notice or consent need not specify the purpose of the meeting. Attendance or participation of a director or Member at a meeting constitutes a waiver of notice of the meeting, unless the director or Member attends a meeting for the sole purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Attendance or participation of a director or a Member at a meeting constitutes a waiver of notice of a particular matter at the meeting that is not included in the purposes of the meeting described in the notice, unless the director or Member objects to considering the matter when it is presented.

Section 3.12. Telephonic and Electronic Meetings. Members of the Board or any committee may participate in a meeting of the Board or committee by means of conference telephone, or similar communications equipment, by means of which all persons participating in the meeting can simultaneously communicate with one another to consider the following matters: (i) emergencies

requiring immediate Board action; or (ii) routine and administrative matters. Notwithstanding the above, Board meetings to discuss or act upon any of the following matters must be held in person even though the matter may be an emergency or a routine or administrative matter: (i) fines; (ii) damage assessments; (iii) initiation of foreclosure actions; (iv) initiation of enforcement actions (except actions that seek the issuance of a temporary restraining order or that relate to violations involving a threat to health or safety); (v) increases in assessments; (vi) levying of special assessments; (vii) appeals from a denial of architectural review approval; or (viii) a suspension of a right of a particular Member. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 3.13. Quorum of Board. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a date and time not less than ten (10) nor more than sixty (60) days from the date the original meeting was called, subject to the notice requirements set forth in Section 3.9 and Section 3.10. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 3.14. Adjournments of Board Meetings. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the right of Members to notice of and attend Board meetings. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by Section 3.9 within two (2) hours after adjourning the meeting being continued.

Section 3.15. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total votes of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 3.16. Conduct of Meetings. The President, or in his or her absence any Vice President or Secretary, shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 3.17. Open Meetings. All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the Board may adjourn any meeting of the Board and reconvene in executive session, excluding Members, to discuss the following matters:

(i) personnel matters; (ii) pending or threatened litigation; (iii) contract negotiations; (iv) enforcement actions; (v) confidential communications with attorneys; (vi) matters involving the invasion of privacy of individual Members; or (vii) matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting. Any decision made or expenditure approved shall be orally summarized (including a general explanation of expenditures) at the meeting and recorded in the minutes of the meeting in such a manner as to protect the sensitive or confidential nature of the information discussed.

Section 3.18. Action Without a Formal Meeting. Routine and administrative actions or emergencies requiring immediate Board action (other than those routine or emergency matters set forth in Section 3.10), may be taken without a meeting of the Board if a consent in writing, setting forth the action so taken, shall be signed by a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted, and such consent shall have the same force and effect as a unanimous vote. The Board shall orally summarize any action taken without a formal meeting by written consent at the next Board meeting and shall record those actions in the minutes of that next meeting.

C. Powers and Duties.

Section 3.19. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Governing Documents or by law directed to be done and exercised exclusively by the Members or the membership generally.

Section 3.20. Duties. The duties of the Board shall include, without limitation, the following:

(a) preparation and adoption, in accordance with the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the common expenses;

(b) 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; provided, unless otherwise determined by the Board, the annual assessment for each Lot's proportionate share of the common expenses shall be payable on January 1 of each year;

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

(d) designating, hiring and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair and replacement of its property and the Common Areas and Common Maintenance Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in bank depositories

which it shall approve and using the proceeds to operate the Association; provided, any reserve fund may be deposited in the directors' best business judgment, in depositories which may or may not be maintained by a bank;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

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

(i) enforcing by legal means the provisions of the Governing Documents by bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

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

(l) 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;

(m) making available upon written request to any prospective purchaser of a Lot, any Owner of a Lot, any First Mortgagee, and the holders, insurers and guarantors of a First Mortgage on a Lot, at the requesting parties' expense, current copies of the Governing Documents and all other books, records and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Areas and Common Maintenance Areas reasonably necessary to the ongoing development or operation of the Properties.

Section 3.21. Management. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to its managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws.

Section 3.22. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income statement); and (iii) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed or compiled basis, as determined by the Board, and may be prepared by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any First Mortgage on a Lot, the Association shall provide an audited financial statement at the expense of the requesting party.

Section 3.23. Borrowing. The Association shall have the power to borrow money for any legal purposes; provided the Board shall obtain approval of a majority of the Members in the event that the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year.

Section 3.24. Rights of the Association. With respect to the Common Areas and the Common Maintenance Areas, and in accordance with the Amended and Restated Certificate of Formation/Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

Section 3.25. Enforcement. The Association shall have the power to impose sanctions, including the levying of fines, for violations of the Governing Documents. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter or of the right to enforce any other violation.

(a) Notice. Except as provided below, prior to suspending an Owner's right to use the Common Areas, filing suit against an Owner (other than a lawsuit to collect an assessment or

related charge or to foreclose the Association's assessment lien), charging an Owner for property damage, or levying a fine for a violation of the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested, notifying the Owner of the following: (i) the nature of the alleged violation or property damage and the amount, if any, due the Association from the Member, (ii) a reasonable time period in which the violator may cure the violation and avoid the proposed sanction (unless the violator was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), (iii) that the Owner may present a written request for a hearing on or before the 30<sup>th</sup> day after the date the Owner receives this notice, and (iv) notice that the owner "may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty."

The notice and hearing provisions of this Section 3.25 do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action.

(b) Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice 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 manner of delivery, is entered by the Person who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking restrictions or rules and regulations) 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 notice and hearing 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 actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

## **Article IV**

### **Officers**

Section 4.1. Officers. The officers of the Association shall be a President, Secretary and Treasurer, to be elected from among the members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the

Members.

Section 4.3. Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

Section 4.4. 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 specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

Section 4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of the 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.

Section 4.6. Agreements, Contracts, Deeds, Leases, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the President or by such other person or persons as may be designated by resolution of the Board.

Section 4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.15.

## **Article V**

### **Committees**

Section 5.1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall cooperate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board of Directors.

Section 5.2. Architectural Control Committee. The Board of Directors shall appoint an Architectural Control committee in accordance with the provisions of the Declaration. The Architectural Control Committee shall have the powers and duties set forth in the Declaration.

## **Article VI**

### **Miscellaneous**

Section 6.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 6.2. Conflicts. If there are conflicts between the provisions of Texas law, the Amended and Restated Certificate of Formation/Articles of Incorporation, the Declaration and these Bylaws, the provisions of Texas law, the Declaration, the Amended and Restated Certificate of Formation/Articles of Incorporation and the Bylaws (in that order) shall prevail.

Section 6.3. Books and Records.

(a) Inspection by Mortgagees. Except for Confidential Records (as defined in Section 6.3(e) below), the books and records of the Association (including financial records) shall be made available for inspection and copying by any holder, insurer or guarantor of a First Mortgage on a Lot, or by the duly appointed representative of any of the foregoing, upon written request stating a proper purpose for the request. Such inspection shall take place during normal business hours at the office of the Association or at such other place within the Property as the Board shall prescribe. The cost, including copy charges, document retrieval charges and a reasonable administrative fee, shall be at the expense of the requesting party and may be required to be paid in advance of the inspection.

(b) Inspection or Production of Records. Each Member of the Association may submit a written request to the Board or its representative by certified mail to the address of the Association or authorized representative as listed on the most current management certificate filed of record, to either inspect the books and records of the Association (including financial records) identified in the request or to have the Association deliver those books and records identified in the request to the Member or to a person designated in a writing signed by the Member as the Member's agent, attorney or certified public accountant. Except for Confidential Records (as defined in Section 6.3(e) below), the Member may inspect or the Association must produce the books and records identified in the request. If the Member requests to inspect the Association's books and records, the Association must, on or before ten (10) business days of receipt of a request, send written notice of the dates and times during normal business hours that the Member may perform the inspection to the extent that those books and records are in the possession, custody or control of the Association. If the Member requests that the Association produce the books and records, the Association must, to the extent that those books and records are in the possession, custody or control of the Association, either (i) produce the records requested on or before ten (10) business days from the date of receipt of the request; or (ii) if the Association cannot produce records on or before ten (10) business days, inform the Member of that fact on or before the ten (10) business day time period and then produce the records on or before fifteen (15) business days of providing that notice.

(c) Inspection and Production Costs. The Association shall adopt and record a records production and copying policy that prescribes the costs for compilation, production and copying of Association records in response to a Member's records request. Upon adoption and recordation of this policy, the Association may require the Member to pay, in advance, the estimated costs of the records inspection or production (subject to the cost limitations set forth under law). On or before the thirtieth (30<sup>th</sup>) business day following the completion of the document inspection or production, the Association shall send the Member a final accounting invoice for the inspection or production. If the actual costs exceed the estimated costs of the inspection or production, the Member must reimburse the Association on or before thirty (30) business days of the final accounting invoice. In the event that the Member fails to timely reimburse the Association, the unpaid balance of the invoice shall be added to and become a part of the Member's assessment

obligation to the Association and a lien against the Member's Lot, and may be collected in the same manner as any other assessment payable to the Association. If the actual costs are less than the estimated costs of the inspection or production of records, the Association shall refund the excess amount to the Member on or before the thirtieth (30<sup>th</sup>) business day after the date that the Association sends the final accounting invoice.

(d) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical Property owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

(e) Confidential Records. Except as hereinafter provided, Members are not entitled to inspect or to have produced to them Confidential Records. For purposes of these Bylaws, Confidential Records shall mean and include records that identify a Member's covenant violation history, a Member's personal financial information (including payment and delinquency information) with the Association, a Member's contact information (other than the Member's address in the development), employee records, attorney's files and records relating to the Association (excluding invoices requested by a Member under Section 209.008(d) of the Texas Property Code), or documents constituting attorney work product or attorney client communications. If a Member whose records are the subject of another Member's inspection or production request consents in writing to the release of his or her Confidential Records, the Association must allow the requesting Member to inspect the Confidential Records or the Association must produce the Confidential Records. In addition, the Association must allow an inspection or must produce Confidential Records if so ordered by a court of competent jurisdiction.

Section 6.4. 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 United States mail, first-class postage prepaid:

(a) if to a Member, at the physical address which the Member has designated in writing and filed with the Secretary or, at the Member's registered electronic mail address, or, if no such physical or electronic address has been designated or registered, at the address of the Lot of such Member; or

(b) 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 the address listed in the most recent recorded management certificate, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6.5. Amendment.

(a) By Owners. Except as otherwise specifically provided herein, these Bylaws may be amended at a regular or special meeting of the members, by vote of a majority of a quorum of Members present or by proxy. If a Member consents to any amendment to these Bylaws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such

amendment. Any amendment to be effective must be recorded in the County Clerk Official Records of Collin County, Texas.

(b) By Board. The Board may unilaterally amend these Bylaws at any time and from time to time if such amendment is (i) for the purpose of correcting technical errors or for clarification only or (ii) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination. In addition to the foregoing, the Board may unilaterally amend these Bylaws if such amendment does not adversely affect the other Owners and is (i) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property; (ii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Property; or (iii) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on any portion of the Property.

**IN WITNESS WHEREOF**, the undersigned officer does hereby certify that the foregoing amendments were approved by a vote of a majority, in the aggregate, of a quorum of members present or by proxy at a regular meeting of the members.

**WINDY HILL FARMS HOMEOWNERS ASSOCIATION, INC.**

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

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of Windy Hill Farms Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_