

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WINDY HILL FARMS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDY HILL FARMS (hereinafter the "Declaration") is adopted and approved by the Owners of Windy Hill Farms Homeowners Association, Inc., a Texas non-profit corporation (hereinafter the "Association"), and is made effective as of the date stated below.

**WITNESSETH:**

**WHEREAS**, Lumbermen's Investment Corporation, a Delaware corporation ("Declarant") prepared an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms" signed on or about November 19, 1999 and recorded as No. 99-0143301 in the Real Estate Records of Collin County, Texas (the "Original Declaration"); and

**WHEREAS**, Declarant deemed it desirable for the efficient preservation of the values and amenities contained within the Property, as hereinafter defined, to establish a homeowners association to be known as Windy Hill Farms Homeowners Association, Inc. to which has been delegated and assigned certain powers of maintaining and administering the common areas and other common facilities described in this Declaration, and of administering and enforcing covenants and restrictions and levying, collecting and disbursing the assessments and charges in accordance herewith; and

**WHEREAS**, Windy Hill Farms Homeowners Association, Inc. has been duly formed under the laws of the State of Texas as a non-profit corporation for the purposes of exercising the functions and purposes set forth herein; and

**WHEREAS**, the Original Declaration was corrected by the Correction to Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms recorded on or about July 12, 2001 as Document No. 2001-0084617 at Volume 04958, Page 03824 *et seq.* of the Deed Restrictions of Collin County, Texas; and

**WHEREAS**, the Original Declaration was supplemented by the Declaration of Annexation and Supplemental Declaration No. 1 (Windy Hill Farms Section 6) recorded on or about April 14, 2005 as Document No. 2005-0048628 at Volume 5897, Page 01217 *et seq.* of the Deed Restrictions of Collin County, Texas; and

**WHEREAS**, the Owners are the owners of real property in the City of Murphy, Collin County, Texas, which is described in Exhibit "A" attached to and incorporated into the Original Declaration and incorporated into this document by reference; and

**WHEREAS**, Article X, Section 2 of the Original Declaration provides for amendment of the Original Declaration by an instrument signed by Owners constituting not less than seventy-

five percent (75%) of the total votes, in the aggregate, of the Association (as defined therein); and

**WHEREAS**, Owners constituting not less than seventy-five percent (75%) of the total votes, in the aggregate, of the Association have consented to the following amendments to the Original Declaration, evidenced by the signatures attached as Exhibit "B" hereto.

**NOW, THEREFORE**, the Owners hereby amend and restate the Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms and declare that the Affected Lots shall be held, sold, and conveyed subject to the restrictions, covenants, and conditions declared below, all of which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Affected Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. All of these covenants shall be binding on all parties having any right, title, or interest in any Affected Lot, in whole or in part, their respective heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each Owner.

## ARTICLE I

### DEFINITIONS

Section 1. "Property" shall mean the real property described in Exhibit "A", and any additions as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 2. "Association" shall mean the Windy Hill Farms Homeowners Association, Inc., a Texas non-profit corporation established for the purposes set forth below.

Section 3. "Lot" shall mean any plot of land indicated upon any recorded subdivision map of the Property creating single-family home sites, with the exception of the Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon.

Section 4. "Affected Lot" shall mean those Lots now existing on the Property or any lots that are added to the membership of the Association from time to time as allowed by this Declaration.

Section 5. "Unit" shall mean any residential dwelling situated upon any Lot.

Section 6. "Owner" shall mean the record owner, whether one of more persons or entities, of a fee simple title to any Affected Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 7. "Board of Directors" shall mean the Board of Directors of Windy Hill Farms Homeowners Association, Inc.

Section 8. "Common Areas" shall mean (i) the land, ponds, waterways and other property not included in the Lots, as shown on any recorded subdivision map of the Property and any walls, landscaping, and other improvements thereon, and all related buildings, structures, fixtures,

machinery, equipment, appliances, and utility facilities now or later installed or attached, (ii) that portion of the property depicted as the "Swim Club" by the Declarant and recorded in the Real Property Records of Collin County, Texas, and all related buildings, structures, fixtures, machinery, equipment, appliances, and utility facilities now or later installed or attached and (iii) all entry features and entrance monuments, and (iv) all other property ever designated by the Declarant under the Original Declaration or by the Association as "Common Areas".

Section 9. "Common Maintenance Areas" shall mean the Common Areas and the entrance monuments, drainage facilities, detention ponds, right-of-way landscaping, and any other areas lying within dedicated public easements or right-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection, and enhancement of the property values and the general health, safety, or welfare of the Owners.

Section 10. "Declaration" shall mean this Amended Declaration of Covenants, Conditions, and Restrictions for Windy Hill Farms, and any amendments, annexations and supplements made in accordance with its terms.

Section 11. "Declarant" shall mean and refer to Lumbermen's Investment Corporation, a Delaware corporation, its successors and assigns who are specifically designated as the successor-in-interest to the Declarant in writing by the Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

## ARTICLE II WINDY HILL FARMS HOMEOWNERS ASSOCIATION, INC.

Section 1. Membership. Every Owner of an Affected Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Affected Lot. Every member shall have the right at all reasonable times during business hours to inspect the books of the Association.

Section 2. Funding. Subject to the terms of this Article, Declarant, for each Affected Lot owned by Declarant, hereby covenants to pay, and each Owner of any Affected Lot by acceptance of a deed for any Lot, whether or not it is expressed in the deed to such Lot, covenant and agree to pay (as a portion of the consideration and purchase money paid by each Owner for an Affected Lot) to the Association: (1) annual assessments or charges and (2) special assessments. Any assessments will be established and collected as provided by this Declaration. Any assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special assessments, together with interest, costs, and reasonable attorney's fees necessary for their collection, shall be a charge on the land and shall run with the land and be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Affected Lot at the time when the assessment fell due.

### Section 3. Assessments.

(a) Annual Assessments. Each Affected Lot is subject to an annual assessment for the purpose of creating a fund for use by the Association as described below. The assessment will be paid by the Owner of each Affected Lot in advance in monthly, quarterly, or annual installments. The maximum annual assessment may be increased each year by not more than 10% above the maximum assessment for the previous year without a vote of the membership of the Association, as provided in the By-Laws of the Association. The rate at which each Affected Lot will be assessed, and whether such assessment shall be payable monthly, quarterly, or annually, will be determined by the Board of Directors of the Association at least thirty (30) days in advance of each affected assessment period. The rate may be adjusted from time to time by the Board of Directors as the needs of the Association may, in the judgment of the Directors, require. The assessment for each Affected Lot shall be uniform. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association indicating whether the assessment has been paid for a specified assessment period.

(b) Purpose of Annual Assessments. The Association shall establish a fund or funds composed of Owners' annual assessments and shall use the proceeds of the funds for expenses, costs and charges for care, maintenance, upkeep, repair, construction, replacement and beautification of the Common Areas and Common Maintenance areas and improvements thereon, including but not by way of limitation, the following: normal, recurring maintenance of the Common Areas and Common Maintenance Areas (including, but not limited to, cleaning, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping and related facilities) and the improvements to the Common Areas and Common Maintenance Areas, such as buildings, facilities, sprinkler systems, and private streets, if any, provided the Association shall have no obligation to make capital improvements to the Common Areas or Common Maintenance Areas; payment of all legal and other costs and expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the property to which the assessment funds applies, including without limitation costs and expenses paid or incurred in connection with insuring the Common Areas or Common Maintenance Areas, directors, officers and employees, and the payment of any taxes, fees and charges levied on the property; payment of all reasonable and necessary expenses in connection with the collection and administration of the assessments; employment of policemen and watchmen, if any; engagement of a manager or management firm and consultants, contractors, employees and other personnel and firms to assist or provide services to the Association and to operate and/or maintain all or any portion of the Common Areas or Common Maintenance Areas, including without limitation the Swim Club; caring for vacant lots; defending, initiating, prosecuting and settling lawsuits and claims and disputes; and doing any other things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order, or which is considered to be for the general benefit to the Owners or occupants of the Property. It is understood that the judgment of the Board of Directors regarding the expenditure of funds and the determination of what constitutes normal, recurring maintenance or other proper expenses of the Association

shall be final and conclusive so long as the judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements of the Common Area and Common Maintenance Area. The reserve fund shall be established and maintained out of regular annual assessments.

(c) Special Assessments. In addition to the annual assessments authorized above, the Association may, by a vote of two-thirds (2/3) of the total number of members, who are voting in person or by proxy at a meeting called for this purpose, levy special assessments as follows: 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 nonrecurring maintenance, or the acquisition, construction, reconstruction, repair, or replacement of a capital improvement upon any Common Area, including related fixtures and personal property, or payment of damages, costs or settlements of lawsuits or claims against the Association, or other costs and expenses which are too large to be paid from annual assessments or reserves, may be assessed. The Association shall not commingle the proceeds of such special assessment with the proceeds of annual assessments. Special assessment proceeds shall be used solely and exclusively to fund the purpose or purposes for which the special assessment is made.

Section 4. Non-payment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the highest non-usurious rate of interest allowed by Texas law or 18% per annum, whichever is less. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay these charges, or foreclose the lien retained herein against the property, according to the terms and provisions of Section 51.002 of the Texas Property Code, as amended, or otherwise. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed, the contract for sale or other conveyance to such Owner, a power of sale to be exercised in accordance with Section 51.002 of the Texas Property Code. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of his property.

Section 5. Subordinated Lien to Secure Payment and Performance. To secure the payment of any assessments levied on individual Affected Lots as above provided, and the performance by the Owners of the Affected Lots of all of the duties, obligations, and indebtedness of the Owners as described by this Declaration and in the Bylaws of the Association, there is hereby reserved a lien for the benefit of the Association. This lien may be enforceable through appropriate proceedings at law or in equity by the beneficiary; provided, however, that any lien shall be specifically made secondary, subordinate, and inferior to all liens, present and future, given, granted, and created by, or at the insistence and request of the Owner of any Affected Lot to secure the payment of monies advanced, or to be advanced, on account of the purchase price and/or the improvement of any Affected Lot; and further provided that as a condition precedent to any proceeding to enforce a lien upon any Affected Lot upon which there is an outstanding valid and subsisting first mortgage lien, the beneficiary shall give the holder of the first mortgage

sixty (60) days written notice, or such notice as may be required by law, of any proposed action. The notice, which shall be sent to the address of the lienholder as reflected on the recorded lien by prepaid U.S. registered mail (or in such manner as shall be allowed by law), shall contain the statement of the delinquent assessments and other charges upon which the proposed action is based. The Board, in its sole and absolute discretion, shall have the option to subordinate the Association's assessment lien to any other lien, but shall have no obligation to do so. Upon the request of any first mortgage lien holder, any beneficiary shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by the first mortgage lien to the holder of that lien. Sale or transfer of an Affected Lot shall not affect the assessment lien. However, the sale or transfer of any Affected Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to the sale or transfer. No sale, foreclosure, or transfer shall relieve such Affected Lot from liability for any assessments becoming due after a transfer or from the lien. The Association shall have the right to file notices of liens in favor of the Association in the Real Property Records of Collin County, Texas.

The Association, acting through its Board of Directors, may, but shall not be required to, upon terms and conditions uniformly applied to all Owners and at the request of an Owner, subrogate the Association's lien on an individual Affected Lot to a lien securing monies advanced to refinance a loan or loans previously advanced on account of the purchase price for an Affected Lot or improvements upon any Affected Lot.

Section 6. Voting Rights. Owners shall be entitled to one (1) vote for each Affected Lot owned. When more than one person holds an interest in any Affected Lot, all such persons shall be Members, but the vote for such Affected Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Affected Lot.

Section 7. Notice and Quorum. Written notice of any meeting of members called for the purpose of taking any action authorized by this Declaration shall be sent to all members, or delivered to their residences, in such manner as shall be permitted by law, not fewer than thirty (30) days nor more than sixty (60) days, or such other time as shall be provided by law, in advance of the meeting. At any such meeting called, the presence of members or of proxies or Voting Representatives entitled to cast two thirds ( $2/3$ ) of all the votes of the Association 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 such subsequent meeting shall be two thirds ( $2/3$ ) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each meeting according to the terms and provisions of the immediately preceding sentence). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE III GENERAL POWERS AND DUTIES OF BOARD  
OF DIRECTORS OF THE ASSOCIATION

Section 1. Purpose of Assessments. The Board of Directors (sometimes called "Board" in this Declaration), for the benefit of the Owners, shall provide and shall pay out of the assessments provided for in Article II above and any other assets of the Association the following:

- (a) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.
- (b) Care and preservation of the Common Maintenance Areas and Common Areas.
- (c) The services of a professional person or management firm to manage the Association, all or part, to the extent deemed advisable by the Board, (provided that any contract for management of the Association shall be terminable by the Association by action of the Board, with no penalty upon ninety (90) days prior written notice to the managing party) and the services of any other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.
- (d) Legal, accounting, banking, custodial and other services.
- (e) A policy or policies of insurance insuring the Association, its board members, officers, volunteers and other personnel against and for the defense of any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amounts as determined by the Board of Directors, including a policy or policies of insurance as provided in Article IV.
- (f) Workers compensation insurance to the extent determined appropriate by the Board or as may be necessary to comply with any applicable laws.
- (g) Such fidelity bonds as may be required by the By-laws or as the Board may determine to be advisable.
- (h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for according to the terms of this Declaration or by law or which, in its opinion, shall be necessary or proper for the enforcement of this Declaration.
- (i) Defense and maintenance of lawsuits, claims and disputes to recover amounts on behalf of the Association or its Board members, officers or volunteers, and payments of costs, fees, damages and awards against or on behalf of the Association and its Board members, officers or volunteers in connection with their acts on behalf of the Association.

Section 2. Powers and Duties of Board. The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for in this Declaration and in the By-Laws of the Association:

- (a) To execute all declarations of ownership for tax assessment purposes regarding the Common Areas, if any, on behalf of all Owners.
- (b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners or by assessments or future assessments if the Board sees fit.
- (c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- (d) To protect or defend the Common Maintenance Areas and Common Areas from loss or damage by lawsuit or otherwise, as the Board sees fit, and to provide adequate reserves for repair or replacements, as the Board sees fit.
- (e) To make reasonable rules and regulations for the operation of the Common Maintenance Areas and Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by the Board after a vote by Owners constituting a majority of the total number of members of the Association.
- (f) To make available for inspection by Owners within sixty (60) days (or such other time period as shall be required by law) after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.
- (g) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property and to pay losses, costs and expenses, and if proceeds are insufficient to repair damage or replace lost property or pay losses, costs and expenses, to assess the Owners to cover the deficiency.
- (h) To enforce the provisions of any rules made by this Declaration and to enjoin and seek damages from any Owner for violation of such provisions or rules, as the Board sees fit.
- (i) To require Owners to comply with all codes and ordinances enacted by the City of Murphy or Collin County, Texas, and federal and state laws that address the condition or use of an Affected Lot in the event the appropriate government authority fails or refuses to enforce compliance. Any violation of city code may be deemed a violation of the restrictive covenants governing the Owner's Lot. In no event, however, shall the Board have any duty or responsibility to do so.

(j) To collect all assessments and fines and enforce all penalties for non-payment of assessments and other amounts owing to the Association, including the filing of liens and institution of legal proceedings, as the Board sees fit.

(k) To institute, defend and maintain lawsuits, claims and actions to recover amounts on behalf of the Association or its Board members, officers or volunteers in connection with their acts on behalf of the Association, and to pay costs, fees, damages and awards charged against the Association or its Board members, officers or volunteers in connection with their acts on behalf of the Association.

(l) To adopt policies, procedures, guidelines and other instructions not inconsistent with this Declaration with respect to the Property, Lots, Affected Lots, Owners, the Common Maintenance Areas and Common areas which the Board deems fit to carry out the purposes of this Declaration or to comply with laws, rules and regulations now existing or hereafter adopted applying to the Association or any part thereof.

Section 3. Board Powers Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, payment of which is to be made from the assessment fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided.

Section 4. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board has the authority to perform or is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association, and in compliance with all applicable laws, rules and regulations.

#### ARTICLE IV TITLE TO COMMON AREAS

Section 1. Conveyance/Association to Hold. The Declarant has, pursuant to the provisions of the Original Declaration, granted and conveyed to the Association all of the right, title, and interest of the Declarant in the Common Areas by that Special Warranty Deed recorded on or about September 29, 2000 as Document No. 2000-0106432 at Volume 4763, Page 3343 *et seq.* of the Deed Records of Collin County, and that Correction Special Warranty Deed recorded on or about December 15, 2005 as Document No. 2005-0175544 at Volume 6066, Page 00010 *et seq.* of the Deed Records of Collin County, and the Association has assumed all maintenance obligations with respect to any Common Maintenance Areas and Common Areas which now exist or may hereafter be established.

Section 2. Liability Insurance. From the date on which title to any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering the Common Areas. The policy limits shall be as determined by the Board of Directors of the Association. The Association shall use its best efforts to see that the policy shall contain, if available, cross-

liability endorsements or other appropriate provisions for the benefit of the members, Directors, and the management company and other insureds, as their interests may be determined.

Section 3. Condemnation. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board of Directors of the Association determines that the funds cannot be used in such a manner for any reason, any remaining funds may be utilized by the Association for the general purposes of the Association.

## ARTICLE V EASEMENTS

Section 1. Utility Easements. The Board has the right to grant perpetual, nonexclusive easements for the benefit of the Association or other entities designated by the Board, upon, across, over, through, and under any portion of the Common Maintenance Areas or Common Areas as reasonably required for the providing of ingress and egress in connection with the installation, replacement, repair, maintenance, use, and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television, to the Property.

Section 2. Association's Easement to Correct Drainage. The Association hereby reserves a blanket easement on, over, and under the ground within the Property to reasonably maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety, and appearance and the Association acting through the Board shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be reasonably necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing in this Declaration shall be interpreted to impose any duty upon the Association or the Board to correct or maintain any drainage facilities within the Property.

Section 3. Easement for Unintentional Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement, or movement of any portion of the Property. This exclusive easement shall exist at all times during the continuance of such an encroachment as an easement appurtenant to the encroaching property to the extent of the encroachment.

Section 4. Entry Easement. The Association hereby reserves an easement to enter upon any Affected Lot and to do the work reasonably necessary for the proper maintenance and operation of the Property in the event that the Owner fails to maintain the Affected Lot as required by this Declaration or the Bylaws, or in the event emergency repairs are required. Entry upon the Affected Lot as provided here shall not be deemed a trespass and the Association shall not be liable for any damage created unless the damage is caused by the Association's willful misconduct or gross negligence.

Section 5. Drainage Easements. Easements for the installation and maintenance of utilities, storm water retention, detention ponds, and/or a conservation area are reserved as may be shown on the recorded plat. Within these easement areas, no structure, plant or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction or flow of drainage channels or slopes in the easements. The easement area of each Affected Lot and all improvements contained therein shall be maintained continuously by the Owner of the Affected Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

## ARTICLE VI PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from, and through the Common Areas, and this easement shall be appurtenant to and shall pass with the title to every Affected Lot, subject to the following provisions:

- (a) The right of the Board to establish and publish rules and regulations governing the use of the Common Areas (including without limitation the Swim Club);
- (b) The right of the Association to suspend the right of use of the Common Areas of an Owner for any period during which any assessment, fine, penalty or cost against his Affected Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association, subject to the provisions in this Declaration, to dedicate or transfer any portion of the Common Areas, if any, to any person or public agency, authority, or utility for such purposes and subject to the conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by the Board on behalf of Owners entitled to cast two-thirds (2/3) of the total number of member votes has been recorded in the Collin County real property records agreeing to a dedication or transfer;
- (d) The rights of the Association set forth in Section 2 of this Article; and
- (e) All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Section 2. Swim Club. Notwithstanding anything set forth or implied to the contrary, the rights of the Owners set forth in Section 1 of this Article with respect to the Swim Club are nonexclusive, and the Association may, by a vote of the majority of members, elect to permit owners of homes in subdivisions other than the Property to have access to and to use and enjoy the Swim Club upon terms and conditions reasonably established by the Board.

Section 3. Effect of Declaration. In any deed, mortgage, trust deed, or any other recorded documents, reference to the easements, restrictions, and covenants described in this Declaration or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of affected parcels as fully and completely as if those easements, restrictions, and covenants were fully related and set forth in their entirety in the documents.

Section 4. Rezoning Prohibited. No Affected Lot shall be rezoned to any classification allowing commercial, manufacturing, industrial, warehousing, institutional, or other non-residential use without the express consent of the Board on behalf of the Association, which may be withheld in the Board's sole discretion. The Association, through the Board, may, but shall not be required to, enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

## ARTICLE VII USE RESTRICTIONS/MINIMUM DWELLING UNIT STANDARDS

Section 1. Residential Purposes Only. All Affected Lots and dwellings shall be used and occupied for single-family residence purposes. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit; provided, however, that nothing herein shall be interpreted to restrict the ability of one or more adults meeting the definition of a single family from residing with any number of persons under the age of eighteen (18) over whom such persons have legal authority. No Affected Lot or dwelling may be used for commercial, manufacturing, industrial, warehousing, institutional or other non-residential purpose if such use involves the attendance or entry of non-residents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to "garage sales" conducted in compliance with applicable ordinances or laws, provided that no Owner shall conduct more than two (2) garage sales of no more than two (2) days duration each during any twelve (12) consecutive month period.

Section 2. Dwelling Unit Standards.

(a) Single family residential dwelling units ("Unit") constructed on any Lot must comply with all applicable governmental requirements, including, but not necessarily limited to, the City of Murphy, Texas.

(b) The exterior wall surface of the first floor of all Units shall have a minimum of seventy-five percent (75%) masonry exterior, excluding windows, doors and gables.

(c) All retaining walls constructed on the Property must be constructed with properly engineered stone, brick, or other masonry material(s) approved in-writing by the ACC.

(d) Owners are permitted to install shingles that are designed to be wind and hail resistant, provided heating/cooling efficiencies, and/or provide solar generation capabilities, so long as the shingles, when installed, resemble the shingles used on property in Windy Hill Farms, are more durable than and are of equal or superior quality to shingles used on property in Windy Hill Farms, and match the aesthetics of the property surrounding the Owner's Lot.

Section 3. Nuisances. No noxious or offensive activity shall be carried on upon any Affected Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals or device or things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Windy Hill Farms community. By way of example but not limitation, noxious or offensive activities including burning of trash or debris of any kind, noise, pollution, excessive vehicle traffic, excessive lighting, and the storing of materials, trash, debris or bulky items in public view for a period of more than seven (7) days unless approved in accordance with this Article.

Section 4. Repair or Rebuilding Activity. An Owner shall, after prior approval of the Board or ACC (defined below) be entitled to conduct on the Owner's Affected Lot activities normally associated with and reasonably convenient to the repair or rebuilding of a Unit, addition to the Unit, fences or other approved structure on the Affected Lot, including without limitation the right to place and maintain on the Affected Lot and adjacent street construction trailers, construction trucks and equipment and other similar items necessary for the repair or rebuilding; provided that, such activities shall be maintained for no longer than reasonably necessary for the repair or rebuilding and shall not be unduly disruptive to the use and enjoyment of any Lots, Common Maintenance Areas or public rights of way.

Section 5. Temporary Structures. Except as otherwise expressly set forth in this Declaration, no structures of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home, mobile home, or other outbuilding, shall be used on any Affected Lot at any time as a residence, either temporarily or permanently.

Section 6. Signs, Holiday Decorations and Picketing. No sign or emblem of any kind may be kept or placed upon any Affected Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Affected Lot so as to be visible from public view except the following:

(a) For Sale Signs. An Owner may erect one (1) sign not exceeding 2' x 3' in size, fastened only to stakes in the ground and extending not more than three (3) feet above the surface of the ground, advertising the Affected Lot for sale.

(b) Signs supporting school, religious or community activities engaged in or supported by an Owner or his or her family, of not more than 2' by 3' in size may be placed by an Owner upon an Affected Lot or attached to the Unit, fastened only to stakes in the ground and extending not more than three (3) feet above the surface of the ground.

(c) An owner or resident may affix a religious item to the entry of the dwelling so long as such item does not (i) threaten the public health or safety, (ii) violate a law, (iii) contain

language, graphics or any display that is patently offensive to a passerby, (iv) is in a location other than the entry door or door frame and extends past the outer edge of the door frame of the Owner's dwelling, or (v) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(d) Political Signs. Political signs may be erected upon an Affected Lot by the Owner of the Affected Lot advocating the election of one that such signs shall not exceed 2' by 3' in size, shall be fastened only to stakes in the ground and extending not more than three (3) feet above the surface of the ground, and shall not be erected more than a reasonable period of time (in no event to exceed ninety (90) days) in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

(e) Signs containing information on firms performing repair or other services on an Affected Lot may be placed on the Affected Lot by the Owner for a period of not more than ten (10) days during the performance of the repair or service, provided that such signs shall not exceed 2' by 3' in size and shall be fastened only to stakes in the ground and extending not more than three (3) feet above the surface of the ground.

(f) Holiday Decorations. Holiday Decorations and holiday lighting may be placed by an Owner on an Affected Lot or attached to the Unit, fences, landscaping and other structures on the Affected Lot for a period of not more than thirty days (30) prior to and not more than thirty (30) after the holiday to which such decorations relate. Such decorations and lighting shall not consist of lighting or noise that would be deemed excessive by a person of ordinary sensibilities as determined in the sole discretion of the ACC, and shall not be disruptive to the use and enjoyment of any Lots, Common Maintenance Areas or public rights of way.

In addition to the foregoing, to protect the harmony of the community, no person shall engage in picketing on any Affected Lot, easement, right-of-way or Common Area within the Property, nor shall any vehicle parked, stored, or driven in the Property bear or display any signs, slogans, symbols, words, or decorations which contain language, graphics or any display that is patently offensive to a passerby as determined by the Board. The ACC may further restrict the display of signs described in Subsections (a), (b) and (e) above if the ACC, in its sole discretion, determines that the type and number of such signs detracts from the overall appearance and enjoyment of the Windy Hill Farms community. The ACC shall have the right to remove any sign, billboard or other advertising structure that does not comply with the provisions of this Section, and in doing so shall not be subject to any liability for trespass or any other liability in connection with such removal.

Section 7. Campers, Trucks, Boats, and Recreational Vehicles. No campers, trucks other than pickups used primarily as passenger vehicles, commercial trucks displaying advertising, boats, boat trailers, recreational vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may be kept on any Affected Lot unless fully enclosed within the garage located on the Lot and/or the vehicles and accessories are in an operable condition and are screened from view by a screening structure or fencing.

Section 8. Animals, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Affected Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All pets must be leashed or otherwise restrained while outside of an enclosed structure, and such pet owner shall promptly clean and remove the discharge and waste of his or her pet.

Notwithstanding the above, if a pet is determined by the Board to constitute a threat to the safety of other residents and pets or if a pet causes or creates an unreasonable nuisance, odor, or disturbance, the Owner shall be given written notice by the Board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than 10 days), the Owner, upon written notice from the Board, may be required to remove the animal. Each Owner agrees to permanently remove his violating animal from the Property within 10 days after receipt of a removal notice from the Board.

Section 9. Garbage and Refuse Disposal. No Affected Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition. No incinerator or similar equipment shall be operated on any Affected Lot.

Section 10. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Affected Lot within the triangular area formed by the street boundary lines and a line connecting them at points twenty-five (25) feet from the intersection of the street boundary lines, or in the case of a rounded property corner, from the intersection of the street boundary lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 11. Parking. No vehicles, trailers, implements, or apparatus may be driven or parked in the Common Maintenance Area, Common Area, or on any easement or on any unpaved area of the Property except as may be approved in advance by the ACC pursuant to the provisions of Section 4 of this Article or other provisions of this Declaration.

Section 12. Building Standards. No building, structure, fence, wall or improvement shall be erected or maintained on any Affected Lot unless it complies with all applicable governmental ordinances, laws, rules, and regulations. In addition, no building, structure, fence, wall, or improvement shall be erected or maintained on any Affected Lot unless same has been approved by the ACC (defined below) according to the terms and provisions of Section 28 of this Article.

Section 13. Detached Buildings. No detached accessory buildings (including, but not limited to, storage buildings), save and except for any detached garages approved by the ACC (defined below) as set forth in Section 28 of this Article, shall be erected, placed or constructed upon any

Affected Lot unless screened from public view at a point in the center of the public right-of-way directly in front of (and, in the case of a corner Lot, also screened from public view at a point in the center of the public right-of-way to the side of) the house on the Affected Lot.

Section 14. Fences. No fence or wall shall be erected or maintained on any Affected Lot nearer to the street than the building setback lines for the front and side yards. No fence or wall shall be erected or maintained on any Affected Lot which shall exceed eight (8) feet in height. No chain link, picket or wire fences or walls shall be erected or maintained on any Affected Lot, and all fences and walls shall be constructed of wood, stone or metal rails except as otherwise approved by the ACC. The cost of reasonable repair and maintenance of any party wall or shared fence shall be shared equally by the Owners who make use of the party structure.

Section 15. Antennae. No exterior antennas, aerials, satellite dishes or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon any portion of the Properties, except that (i) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; (ii) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; or (iii) antennas or satellite dishes designed to receive television broadcast signals [(i), (ii) and (iii) are collectively referred to as "Permitted Devices"] shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received.

Section 16. Chimneys. All fireplaces flues, smoke stacks, and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling.

Section 17. Clothes Hanging Devices. Exterior clothes hanging devices shall not be permitted unless screened from public view from public rights of way.

Section 18. Window Treatment. No aluminum foil, reflective film, or similar treatment shall be placed on windows or glass doors or any other part of a Unit, fence, wall or structure on an Affected Lot.

Section 19. Water Wells. The drilling, operating, or maintaining of any water wells on any Affected Lot shall not be permitted.

Section 20. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Affected Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Affected Lot. No derrick or other structure designed for use in boring for oil or natural gas or other minerals shall be erected, maintained or permitted upon any Affected Lot.

Section 21. Playground and Recreational Equipment. No jungle gyms, swing sets, basketball hoops and backboards, similar playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any Lot without prior written approval from the ACC.

Any basketball hoops or backboards permitted by the Committee must not be placed such that game play occurs in the street.

Section 22. Leasing of Lots. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. All Leases shall be in writing. Lots may be leased only in their entirety. No fraction or portion may be leased. No transient tenants may be accommodated in a Lot. All leases shall be in writing and shall be for an initial term of no less than six (6) months. A copy of the lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-laws and any rules or regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

Section 23. Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties. Any violation may be considered a violation of this Declaration. However, the Association shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 24. Unightly or Unkept Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. No person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake, street or gutter, or anywhere on the Common Areas or Common Maintenance Areas.

Section 25. Solar Energy Devices. An owner must obtain the written approval of the ACC prior to installing a solar energy device. An owner may not install a solar energy device that threatens the public health or safety or violates a law, as adjudicated by a court, or is located on the Common Areas or Common Maintenance Areas. Solar energy devices may only be installed on the roof of the Owner's home or another structure approved by the ACC, or in a fenced yard or patio owned and maintained by the Owner. If mounted on the roof of the Owner's home, the solar energy device (i) may not extend higher than or beyond the roofline, (ii) must conform to the slope of the roof and have a top edge that is parallel to the roofline, and (iii) must be located in an area approved by the ACC, unless an alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the device if located in the area designated by the ACC. If located in a fenced yard or patio, the solar energy device cannot be taller than the fence line. Any frame, support bracket or visible piping or wiring must be a silver, bronze or black tone commonly available in the marketplace, and the installation cannot void material warranties.

Section 26. Rainwater Collection Devices. An Owner may not install a rain barrel or rainwater harvesting system if such device is to be installed in or on the Common Areas or Common Maintenance Areas, or is located between the front of the Owner's home and an adjoining or adjacent street. Such barrel or system must be of a color consistent with the color scheme of the Owner's home, and may not display any language or other content that is not typically displayed by such a barrel or system as it is manufactured. The ACC may regulate the size, type and shielding of, and the materials used in the construction of any rain barrel, rainwater harvesting device or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, the Common Areas or Common Maintenance Areas if the restriction does not prohibit the economic installation of the device or appurtenance on the Owner's property and there is a reasonably sufficient area on the Owner's property in which to install the device or appurtenance. Owners must obtain approval from the ACC prior to the installation of a rain barrel or rainwater harvesting system.

Section 27. Flag Displays. An Owner or resident may display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces (hereinafter the "Permitted Flags"). Any flag of the United States must be displayed in accordance with 4 U.S.C. Sections 5-10. Any flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code. A flagpole attached to a dwelling or a freestanding flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling. The display of a flag or the location and construction of the supporting flagpole must comply with applicable zoning ordinances, easements and setbacks of record. A displayed Permitted Flag and the flagpole on which it is flown must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed. An Owner may not install a flagpole which is greater than twenty feet (20') in height. An Owner may not install more than one flagpole on the owner's property, nor may an Owner install lights to illuminate a displayed flag which, due to their size, location or intensity, constitute a nuisance. Any Permitted Flag displayed must not be greater than 3' x 5' in size. An owner may not locate a displayed flag or flagpole on the Common Areas or Common Maintenance Areas. Prior to erecting or installing a flag and/or flag pole, an owner must first submit plans and specifications to and receive the written approval of the ACC. The plans and specifications must show the proposed location, material, size and type of such flag and flagpole (and all parts thereof, including any lights to illuminate a displayed flag).

Section 28. Architectural Control Committee. The Architectural Control Committee (the "ACC") shall be composed of such number of individuals selected and appointed by the Board as the Board may determine from time to time, each generally familiar with residential and community development design matters and knowledgeable about the Association's concern for a high level of taste and design standards within the Property. The ACC shall function as the representative of the Owners of the Affected Lots for the purposes set forth in this Declaration as well as for all other purposes consistent with the creation and preservation of a first-class community development. The ACC shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony, and conformity throughout the Property.

In the event of the death or resignation of any member of the ACC, the Board shall have full authority to designate and appoint a successor. No member of the ACC shall be liable for, and shall be indemnified against, claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this Declaration. The ACC shall be entitled, at any time and from time to time, to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers, and landscape technicians) approved by the Board in connection with the performance of its duties and all reasonable costs and expenses related to these duties paid for or reimbursed by the Association. The Board shall have the right and power to impose and collect a reasonable fee from each Owner for the review and approval/disapproval process and services rendered by the ACC.

No building, structure, fence, wall, driveway, sidewalk, solar device, flagpole or improvement of any kind or nature shall be erected, placed or altered on any Affected Lot until all plans and specifications, a plot plan and one or more surveys, and such other information as the ACC shall reasonably require, have been submitted to and approved in writing by the ACC, as to:

- (i) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevations with respect to nearby streets;
- (ii) minimum finished floor elevation, mandatory brick shelf elevation, and proposed footprint of the dwelling;
- (iii) conformity and harmony of the external design, color, type, and appearance of exterior surfaces and landscaping;
- (iv) location with respect to topography and finished grade elevation and effect of location and use on neighboring Affected Lots and improvements; drainage arrangements; and
- (v) the other standards set forth within this Declaration (and any amendments) or as may be set forth within bulletins promulgated by the ACC, or matters in which the ACC has been vested with the authority to render a final interpretation and decision.

The ACC is authorized and empowered to consider and review all aspects of dwelling and other construction which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

Final plans, specifications, and surveys and other information requested by the ACC shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications, surveys and other information meet the approval of the ACC, one complete set of plans, specifications and surveys will be retained by the ACC and the other complete set will be marked "Approved" and returned to the Owner or his designated representative. If the plans, surveys, materials or other particulars are found not to be in compliance with this Declaration, one set of such plans, specifications, and surveys shall be returned "Disapproved," accompanied

by a reasonable statement of items found not to comply with this Declaration. Notwithstanding the foregoing, the ACC may communicate its approval or disapproval and any request for additional information, or for additional time to render its decision, to an Owner by other written means, including electronic communication.

Any modification or change to an approved set of plans, specifications, surveys and materials must again be submitted to the ACC for its inspection and approval prior to proceeding with any construction activities.

The ACC shall have a reasonable time to approve or disapprove submitted plans, specifications, and surveys, not to exceed thirty (30) days after the date of submission of all required and requested information, unless the ACC notifies the Owner that more time is required, in which case the ACC shall make its approval or disapproval within the additional time specified in its notice to the Owner. In the event the ACC fails to make its decision within the initial thirty (30) days or such additional time specified in its notice to the Owner, then the same information submitted to the ACC may be submitted by the Owner to the Board of Directors of the Association. If the Board of Directors fails to approve or disapprove such plans, specifications surveys and materials within thirty (30) days, then the ACC and Association disapproval shall be presumed.

The ACC may from time to time publish and promulgate architectural standards bulletins, policies and information sheets (including procedures for ACC review and approval), which shall be fair, reasonable, and uniformly applied and shall carry forward the spirit and intention of this Declaration. Unless otherwise indicated, the ACC shall not have unbridled discretion with respect to taste, design, and any standards specified in this Declaration. The ACC shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design and use of private property. Such bulletins, policies and information sheets shall supplement this Declaration and are incorporated by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ALL ARCHITECTURAL STANDARDS BULLETINS, POLICIES AND INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY AFFECTED LOT.

Section 29. Enforcement. The Association, through its Board, may impose sanctions for violations of this Declaration, the By-laws or rules in accordance with procedures adopted by the Board, including reasonable monetary fines and suspensions of the right to vote and to use recreational facilities, if any, within the Common Areas. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owner shall, at his or her own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right, in addition to any other remedy provided herein for the enforcement of this Declaration, to enter the property, remove the violation and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and

collected as an assessment in accordance with Article II of this Declaration. In addition, the Association may exercise self-help to cure violations (including, without limitation, the towing of vehicles and the removal of personal property), and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Failure to comply with this Declaration, the By-laws or the rules and regulations shall also be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 30. Notice of Violation. To evidence any violation of this Declaration, the By-laws, or rules by any Owner, the Board may file, but is not required to file, in the deed records of Collin County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association.

## ARTICLE VII ANNEXATION

Section 1. Annexation by Action of Members. At any time the Board of Directors may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included. No annexation shall be effective unless approved in writing by members entitled to cast two-thirds (2/3) of the total membership votes. Any property that is contiguous to existing property to this Declaration may be annexed according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. An annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 1 above executed by the parties described above.

Annexation shall be evidenced by a written Declaration of Annexation executed by the Board setting forth the legal description of the property being annexed.

Section 2. No Duty to Annex. Nothing contained in this Declaration shall establish any duty or obligation on the part of the Association or any member to annex any property to this Declaration.

## ARTICLE IX GENERAL

Section 1. Remedies. In the event of any default by any Owner under the provisions of this Declaration, By-laws, or rules and regulations of the Association, the Association and/or any Owner shall have each of the rights and remedies which may be provided for in this Declaration, the By-laws, and any rules and regulations, and those which may be available at law or in equity (including without limitation the rights and remedies set forth in Section 51.002 of the Texas Property Code, as amended), and may prosecute any action or other proceedings against a

defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of a lien and the appointment of a receiver for the Affected Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for the payment of the money and its collection, or for any combination of remedies, or for any other relief. No remedies provided by this Declaration or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses, and all damages, permitted by law from the due date until paid, shall be charged to and assessed against a defaulting Owner, and shall be added to and deemed part of the respective assessments (to the same extent as the lien provided herein for unpaid assessments) upon the Affected Lot and upon all of its additions and improvements, and upon all of his personal property upon the Affected Lot. Any of these rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

Section 2. Term and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless sixty-seven percent (67%) of the total members entitled to vote shall have voted to terminate the covenants and restrictions of this Declaration upon the expiration of the initial ten (10) year period or any extension thereof. The termination shall be by written instrument signed by sixty-seven percent (67%) of the total votes of the Owners and properly recorded in the Real Property Records of Collin County, Texas. This Declaration may be amended by an instrument signed by Owners constituting not less than sixty-seven percent (67 %) of the total members entitled to vote of the Association. Any amendment must be recorded. Notwithstanding any provisions to the contrary, the Board may, at its sole discretion and without consent being required of anyone amend this Declaration to cause this Declaration to be in compliance with all applicable laws, rules, and regulations (including without limitation all applicable laws, rules, and regulations of the Federal Housing Administration and/or the Veterans Administration).

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Rights and Obligations. The provisions of this Declaration and the Articles of Incorporation and By-laws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees, and mortgagees. By the recording or the acceptance of a deed conveying an Affected Lot of any ownership interest in the Affected Lot whatsoever, the person to whom such Affected lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and By-laws, whether or not mention of them is made in the deed.

Section 5. Miscellaneous Provisions. Any provisions of this Declaration or of the Articles of Incorporation and By-laws to the contrary notwithstanding, the following provisions shall control:

(a) FHA/VA Approval. If any prospective Owner applies for FHA or VA mortgage financing and receives a commitment therefor, then to the extent, if any, required by law, the following actions will require approval of the Federal Housing Administration or the Veterans Administration, as applicable: (1) addition of properties except as set forth in this Article, (2) dedication of Common Areas, and (3) amendment of this Declaration.

(b) The following actions will require notice to all institutional holders of first mortgage liens (singularly, a "First Mortgagee") who have notified the Association in writing of their address to which such notices are to be delivered: (1) abandonment or termination of the Association; or (2) a material amendment to the Declaration described in Subsection (d) below.

(c) Upon the request of any First Mortgagee of a dwelling on an Affected Lot, the Association shall furnish a written notice of any default by the Owner of such dwelling in the performance of the Owner's obligations under this Declaration or the By-laws or Association rules and regulations which is not cured within thirty (30) days unless such default is being cured by a payment plan or other means. Any First Mortgagee of a dwelling who comes into possession of such dwelling according to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued prior to the time such holder comes into possession of the dwelling.

(d) Unless at least fifty-one percent (51%) (or such lesser percentage as is allowed or permitted by applicable FHA or VA laws or regulations from time to time) of the First Mortgagees (based upon one vote for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(i) by act or omission seek to abandon, partition, encumber, or transfer any part of, or interest in, the Common Areas, if any, (the granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause);

(ii) substantially change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner by the Association;

(iii) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

(e) Failure of Mortgagee to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the First Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the First

Mortgagee by certified or registered mail, return receipt requested at the address of the First Mortgagee contained on recording establishing the lien for such mortgage.

(f) All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

Section 6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 7. Conflicts. In the event of conflict between the terms of this Declaration and the Bylaws, rules, regulations, or Articles of Incorporation of the Association, this Declaration shall control.

Section 8, Floodplain. In the event any of the Affected Lots are located partially within a floodplain or flood prone area, such Affected Lots, and the construction of any improvements, must conform with the rules, regulations, and guidelines set forth in all applicable City of Murphy, Texas, flood management ordinance(s) and other applicable laws, rules, and regulations.

Section 9. Enforceability by City of Murphy. All rights granted or retained through this Declaration for the Association shall inure to the benefit of, and be enforceable by, the City of Murphy, Texas.

Section 10. Counterparts. This Declaration may be executed in one of more counterparts, all of which, when taken together, shall constitute one and the same Declaration.

**IN WITNESS WHEREOF**, the undersigned Officer hereby certifies that this Amended and Restated Declaration was approved in its entirety by the requisite number of Owners in the Association in accordance with the Original Declaration.

**WINDY HILL FARMS HOMEOWNERS  
ASSOCIATION, INC.,**  
a Texas non-profit corporation

By \_\_\_\_\_

Its President

Printed Name: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the President of Windy Hill Farms Homeowners Association, Inc. on behalf of said Corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT "B"**

By signing below, I acknowledge and agree to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windy Hill Farms.

**OWNER:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Property Address: \_\_\_\_\_