

MEDINA COUNTY RECORDER
NANCY ABBOTT

20040R003904

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DOCUMENT TYPE: DECLARATION
PAGES: 17

MEDINA COUNTY RECORDER
NANCY DONAHUE ABBOTT

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CORRECTED DOCUMENT

The purpose of re-recording this Declaration is to incorporate additions and modifications requested by the Medina County Prosecutor.

MEDINA COUNTY RECORDER

NANCY ABBOTT

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~~RECORDING FEE: 140.00~~

~~DOCUMENT TYPE: DECLAR/PLAT~~

~~PAGES: 16~~

Ref: 2003PC 000141

MEDINA COUNTY RECORDER

NANCY DONAHUE ABBOTT

(DO NOT REMOVE THIS COVER SHEET.
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3984-1

DECLARATION OF THE WINDFALL RESERVE LANDOWNERS ASSOCIATION

This Declaration, made as of the dates hereinafter set forth, by and between **HEWITT BOGGS CO., INC.**, an Ohio corporation, whose address is P O Box 5472, Akron, Ohio 44334, and **THE WINDFALL RESERVE LANDOWNERS ASSOCIATION**, an Ohio not-for-profit corporation, whose address is P O. Box 5472, Akron, Ohio 44334.

RECITALS

A HEWITT BOGGS CO . INC , hereinafter referred to as Declarant, has submitted for recording the plat for Windfall Reserve Subdivision Phase 1 in the Township of Montville, Medina County, Ohio

B The development of the several phases of Windfall Reserve Subdivision requires that Declarant shall initiate a property owners association which shall assume and be responsible for the ownership, control, administration, and maintenance of the commonly-owned open space within the several phases of the said Subdivision, and

C Declarant has incorporated The Windfall Reserve Landowners Association under the laws of the State of Ohio as a non-profit corporation for the purpose of exercising the aforesaid functions

NOW, THEREFORE, the undersigned Declarant, being the subdivider of Windfall Reserve Subdivision, does hereby declare that the property embraced within the plats for the several phases of Windfall Reserve Subdivision is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, assessments, charges and liens hereinafter set forth, and The Windfall Reserve Landowners Association also joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the herein contained covenants and restrictions

DEFINITIONS

The terms used in this document shall have these meanings, unless the context requires otherwise

1 "Articles" and "Articles of Incorporation" mean the articles of incorporation, as the same may be lawfully amended from time to time, filed with the Secretary of State of Ohio, incorporating The Windfall Reserve Landowners Association as an Ohio non-profit corporation pursuant to the Ohio Revised Code, as amended (the "ORC")

2 "Allotment" means the territory embraced within the several existing and future Phases of Windfall Reserve Subdivision, whether considered as an entity or as individual sublots and blocks A legal description of the boundary of the Allotment is attached as Exhibit A

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3. "Association" and "Landowners' Association" mean the non-profit corporation created by the filing and approval of the Articles

4 "Board" and "Board of Trustees" mean those persons who, as a group, serve as the Board of Trustees of the Association

5 "By-Laws" means the by-laws or code of regulations of the Association, as the same may be lawfully amended from time to time, created under Chapter 1702 ORC.

6. "Common Area" means the part of the Allotment indicated as "Open Space" on the Plats, and which is specifically intended to be devoted to the common use of members Common Areas may be designated as "Blocks" on the Plats.

7. "Declaration" means this instrument by which the Common Area is created and submitted to the Association, as this instrument may be lawfully amended from time to time.

8 "Instruments" means this Declaration, the Articles, the By-Laws, the Plats, and all other documents, contracts, or instruments establishing ownership of or exerting control over the Common Area

9 "Lot" means any building site created in the Allotment, whether as created by the recording of the Plats or as amended by subsequent County of Medina subdivision approval

10. "Member" means a person owning a fee simple interest in a Lot If a Lot is owned by more than one Person, the owners shall jointly constitute one "Member" for purpose of this Declaration and shall inform the Secretary of the Association as to which Person shall exercise the voting rights of such Member granted in the Instruments

11 "Occupant" means an individual lawfully residing at or occupying the Lot, irrespective of whether that individual is the owner thereof

12. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

13 "Plat" means one of the several subdivision plats for the Allotment, as the same may be lawfully recorded or amended from time to time The Plats show the individual Lots and Blocks in the Allotment, including the Common Area

14 "Trustee" and "Trustees" means that person or those persons serving at the time pertinent as a trustee or trustees on the Board of Trustees of the Association.

THE PLAN

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for ownership and administration of the Common Area

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ARTICLE I

THE LAND

The Declaration applies to the land embraced within the Allotment located in the Township of Montville, Medina County, Ohio, as the same is described in attached Exhibit A

ARTICLE II

NAME

The name by which the Association shall be known is "The Windfall Reserve Landowners Association."

ARTICLE III

PURPOSES: RESTRICTIONS

Section 1 Purposes. This Declaration is being made to establish the Common Area for the purpose of, as the case may be, permanent open space for the benefit of all Members and Occupants and their heirs, successors, invitees, guests, contractors, employees, and assigns, to establish an Association to own and administer the Common Area; to provide for the preservation of the values of the Common Area and Lots, to provide for and promote the benefit, enjoyment and well being of Members and Occupants; to administer and enforce the obligations, covenants, easements, charges and restrictions set forth herein and in the Plats; and to raise funds through assessments to accomplish these purposes.

Section 2 Restrictions The Common Area is hereby declared to be open space to be held by the Association for the benefit of Members/ The Common Area shall be subject to the following restrictions

(a) Uses of the Common Area. Except as otherwise specifically provided in the Declaration, no portion of the Common Area shall be used for any purpose other than those authorized in Article III, Section 1, hereof. No commercial activity whatsoever shall be allowed. No person shall be permitted to place any structure within the Common Area. The contour of the Common Area in existence after completion of construction of the Allotment shall not be changed without the prior written consent of a majority of the Members

(b) Common Area Uses. The Common Area shall be used in common by Members, their family members and their accompanying invitees, in accordance with the purposes for which it is intended, subject to such rules and regulations as may from time to time be promulgated by the Board.

*The Common Area shall never be reduced in size.

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(c) Nuisances No noxious or offensive activity shall be carried on, nor shall alcoholic beverages be kept or consumed, within the Common Area, nor shall the Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Member.

(d) Signs No sign of any kind shall be erected or displayed on the Common Area unless such sign has been previously approved by the Board in writing

(e) Discrimination No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Member in favor of another

(f) Arbitration In the event of any dispute between Members as to the application of these restrictions or any rule or regulation to any particular circumstance, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and give written notice to each party thereof no less than five (5) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No other action may be instituted by either party to such a dispute unless and until arbitration pursuant hereto has first been completed.

(g) Noise Prohibited No Member shall make or permit any disturbing noises within the Common Area, nor shall he allow his family, servants, employees, or invitees to make such noises, nor permit any conduct by such persons that will interfere with the rights, comforts, or conveniences of other Members' use and enjoyment of the Common Area or their Lots

(h) Building or Landscaping The Association shall be responsible for the landscaping, normal maintenance and beautification of the Common Area. No additional improvements shall be constructed in the Common Area without the affirmative vote of a majority of the Members

(i) Dumping Prohibited. No lawn waste, branches, trash, petroleum products or other waste shall be discharged within or into the Common Area

(j) Remedies For a violation or breach of any of these restrictions by any person claiming by, through or under any Member, or by virtue of any judicial proceeding, the Association shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure promptly to enforce any of the restrictions by any court of competent jurisdiction shall not affect any of the other restrictions. The Board shall have the right and power to levy fines, impose penalties, and enforce such fines and penalties in an amount equal to 150% of the cost to rectifying any violation

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ARTICLE IV

LANDOWNERS ASSOCIATION

Section 1 Membership Membership in the Association shall be limited to every person who is or becomes a record owner of a fee simple interest in a Lot, subject to the limitations set forth in the definition of the term "Member." The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lots, and transfer of a Member's Lot shall automatically transfer membership to the transferee

Section 2 Voting Rights Each Member shall be entitled to one (1) vote for each Lot owned

Section 3 Board of Trustees The Board initially shall be those three (3) persons named as the initial Trustees pursuant to the Articles who shall hold office until their death, resignation or the election of their respective successors. The Board of Trustees shall have three (3) members

Section 4. Authority The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Area, and assess and collect funds for the payment thereof, and do all things and exercise all rights provided by the Instruments that are not specifically reserved to Members, including the right to adopt rules and regulations for the orderly administration and health and welfare of the Members. Such rules and regulations shall not be deemed to be an amendment of this Declaration.

ARTICLE V

AGENT FOR SERVICE

The name and address of the person to receive service of process for the Association is James A Hewitt, P O Box 5472, Akron, Ohio 44334

In the event this individual for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the person so registered shall be the person to receive service of process for the Association

ARTICLE VI

MAINTENANCE AND REPAIR

Section 1 Association Responsibility The Association shall maintain and repair the Common Area, including and not limited to trees, vegetation, roadways, walkways (if any), stormwater detention basins, wetlands, and any structures located within the Common Area

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The Association may delegate the responsibility for maintaining, cleaning, and managing the Common Area to the Declarant or to any other contractor, person or entity.

Section 2. Individual Responsibility Each Member shall keep the portion of his Lot which abuts the Common Area free of trash and litter. In the event a Member shall fail to comply with this Article VI, Section 2, or the need for maintenance or repair is caused by the negligence or intentional act of any Member or invitee thereof, and the cost of maintenance or repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Member assessment, as hereinafter defined, on such Member. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

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ARTICLE VII

INSURANCE

Section 1 Liability Insurance The Association shall obtain and maintain a comprehensive policy of public liability insurance covering the Common Area, insuring the Association, the Trustees, and the Members, with such limits as the Board may determine, covering claims for personal and bodily injury, death and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to homeowners' associations generally and those developments similar in location and use of the Common Area, as determined by the Association. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Member or a Trustee because of negligent acts of the Association, other Trustees, the Association, or other Members as appropriate.

Section 2. Other Association Insurance In addition, the Association may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Association may determine appropriate.

Section 3 Member's Insurance Any Member may carry such insurance in addition to that provided by the Association pursuant hereto as that Member may determine. A Member may obtain insurance against liability for events occurring within or on his Lot, losses with respect to personal property and furnishings, and losses to improvements owned by the Member. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Trustees, and all other Members.

Section 4 Sufficient Insurance In the event vegetation or the improvements, if any, forming a part of the Common Area, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction thereof, such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment thereof.

Section 5 Insufficient Insurance In the event the Common Area or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if

*Section 3 Government Rights.
Montville Township and/or other governmental bodies are hereby granted the right of entrance to the common area for emergency purposes in the event of nonperformance of maintenance or improvements affecting the public interest. Such entities shall have the right, after reasonable notice, to make improvements and perform maintenance functions with the costs levied as a lien against the association and the property of the association members. Advance notice is not necessary for emergency entrance onto such common area.

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insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Members shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association may make repairs, restoration or reconstruction of the Common Area so damaged or destroyed at the expense (to the extent not covered by insurance) of all Members. Should any Member refuse or fail after reasonable notice to pay that Member's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Member and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments

Section 6 Fidelity Bonds The Association shall obtain fidelity bond coverage with respect to persons handling Association funds in amounts deemed reasonably necessary by the Board to protect against substantial losses.

ARTICLE VIII

CONDEMNATION

In the event any of the Common Area, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by a condemning authority, all Members shall share equally in the net condemnation proceeds, if any.

ARTICLE IX

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1 Easements of Enjoyment. Limitations Every Member shall have a right and easement of enjoyment in, over and upon the Common Area and a right of access to and from such Member's Lot, which rights and easements shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Area, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Member's Lot by such Member, or any part thereof. Any Member may delegate that Member's right of enjoyment to the Common Area and to ingress and egress from the Member's Lot to the members of that Member's family and to any Occupants on such Member's Lot

Section 2. Right of Entry for Repair, Maintenance and Restoration The Association shall have a reasonable right of entry and access to, over, upon and through any Lot to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Common Area

Section 3 Easement for Services A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, EMS personnel, all similar persons, and to the local governmental authorities and public utilities, but not to the public in general, to enter upon the

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Common Area in the performance of their lawful duties and installation and maintenance of utility services

ARTICLE X

ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. Each Member, by acceptance of a deed to such Member's Lot (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, and (3) special individual Lot assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2 Purpose of Assessments The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members and the best interests of the Common Area.

Section 3. Elements And Apportionment. Due Dates

(a) Annual Operating Assessments

(1) At the time of the filing of this Declaration, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate and prorate among the Members on an equal basis (except as otherwise set forth in this Declaration) the common expenses of the Association which consist of the following

(a) the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

(b) the estimated next fiscal year's costs for insurance and bond premiums to be obtained and paid for by the Association,

(c) the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(d) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacement of major improvements for which cash reserves over a period of time in excess of one year should be maintained;

(e) the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for legal and accounting services, costs of mailing, postage, supplies and

materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded;

(f) the estimated next fiscal year's real estate taxes, if any, due from the Association, and

(g) the estimated cost of the next fiscal year's utility services, if any, used or consumed upon or within the Common Area.

(2) The Board shall thereupon allocate equally to each Member such Member's share of all of these items and thereby establish the annual operating assessment for each Member. For administrative convenience, any such assessment may be rounded up to the nearest ten dollars.

(3) The annual operating assessment shall be payable in advance, provided that nothing contained herein shall prohibit any Member from prepaying assessments. The due dates of any such installments shall be established by the Board. Failure to pay any installment when due shall result in a surcharge of 25% of the installment so due and shall be relieved on each anniversary date until paid.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Members on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Members.

(b) Special Assessments for Capital Improvements

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements within the Common Area to the extent that reserves therefore are insufficient, provided that new capital improvements not replacing or repairing existing improvements which cost over \$5,000.00 shall not be constructed nor funds assessed therefore without the prior written consent of a majority of the Members. Capital improvements less than \$5,000.00 shall be within the authority of the Board. Failure to pay any installment when due shall result in a surcharge of 25% of the installment so due and shall be relieved on each anniversary date until paid.

(2) Any such assessment shall be prorated equally among all Members and shall become due and payable on such date or dates as the Board determines, following written notice to the Members, provided, however, that Declarant shall be exempt

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from such assessment as to the Lots it owns which are unimproved with residences, either completed or under construction

(c) Special Individual Lot Assessments.

The Board may levy an assessment against an individual Member, or Members, to reimburse the Association for those costs incurred in connection with such Member or Members properly chargeable by the terms hereof to a particular Member or Members (such as, but not limited to, the cost of making repairs which would be the responsibility of a Member or Members, the cost of insurance premiums separately billed to such Member or Members, and such Member's enforcement and arbitration charges) Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to such Member or Members subject thereto. The Board is authorized to charge 150% of the actual cost to remove and/or repair if the Member doesn't rectify the problem after 15 days written notice thereof.

(d) Minimum Mandatory Capital Assessment.

The Board may levy an additional assessment for a minimum annual capital assessment in an amount to be determined by the Board and approved by a majority of the Members. The assessment shall be in addition to any necessary operating assessments

Section 4 Effective Date of Assessments Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Members at least thirty (30) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Member at the address set forth on the Association's records shall constitute notice to that Member, unless the Member has delivered written notice to the Association of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Member

Section 5 Effect of Non-payment of Assessments: Remedies of the Association for Default

(a) If any assessment or any installment of any assessment is not paid within thirty (30) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, and (ii) charge interest on the entire unpaid balance (or on an overdue installment alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), and (iii) charge a penalty equal to up to a quarter of the assessment past due

(b) Annual operating and special assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association.

(c) At any time after an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, may be filed with the Auditor of Medina County, Ohio, pursuant to authorization given by the Board. The certificate shall contain a description of the Lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments, and shall be signed by the president or other officer of the Association. A copy of said recorded certificate of lien shall be sent by certified mail, return receipt requested, to the last known address of the owner or owners of such Lot

(d) The lien provided for herein shall remain valid, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien

(e) Any Member who believes that an assessment chargeable to such Member's Lot (for which a certificate of lien has been filed by the Association) has been improperly charged against such Lot, may bring an action in the Court of Common Pleas of Medina County, Ohio, for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Member, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Each such assessment together with interest and costs shall also be the personal obligation of the Member who owned the Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest and costs shall not be the personal obligation of that Member's successors in title unless expressly assumed by the successors, provided, however, that the right of the Association to a lien against such Lot, or to foreclose any lien thereon for these delinquent assessments, interest and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) The Association, as authorized by the Board, may undertake all legal and equitable remedies available to it, including without limitation, filing a lien or liens to secure payment of delinquent assessments, interest and costs, bringing an action at law against the Member or Members personally obligated to pay the same, and an action to foreclose a lien. In any such action, interest and costs of such action (including attorneys fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

(h) No Member may waive or otherwise escape liability for the assessments provided for in these Restrictions by non-use of the Common Area, or any part thereof, or by abandonment of such Member's Lot

Section 6 Subordination of the Lien to First Mortgage The lien of the assessments provided for herein shall be subject and subordinate to the liens of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the

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mortgage, foreclosure of the mortgage, or lease or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale shall take the Lot free of any claims for unpaid installments of assessments or charges against the Lot which became due and payable prior to the time such holder or purchaser took title to such Lot.

Section 7 Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Lot have been paid. This Certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE XI

AMENDMENTS AND TERMINATION

Section 1. Power to Amend. Except as hereinafter provided, amendment of this Declaration or other Instruments shall require the affirmative vote of a majority of the Members.

(a) The consent of Members exercising not less than 80% of the voting power of Members shall be required for any amendment effecting a change in

- (i) The liability for common expenses pertaining to the Common Area,
- (ii) The number of votes in the Association pertaining to any Member; or
- (iii) The fundamental purposes to which the Common Area is restricted.

(b) The consent of Members exercising not less than 75% of the voting power of Members shall be required to terminate the Association, unless such termination is otherwise required

(c) In all other amendments, the consent of Members representing not less than 51% of the voting power of Members shall be required

Section 2. Method to Amend. An amendment to this Declaration (or to the By-Laws), adopted with the consents hereinbefore provided, in a writing executed with the same formalities as the Declaration by two officers of the Association and containing a certification that the amendment was duly adopted in accordance with the foregoing provisions, shall be effective upon the filing of the same with appropriate State of Ohio and County authorities

Section 3 Termination. ^{*}In the event the Association is terminated pursuant to this Article XII, or otherwise, the Association shall pay or make provisions for paying all liabilities of the Association and shall convey the Association's interest in the Common Area as approved by the Members. In the event of the Association's termination without such conveyance as approved by

*The Association shall not be dissolved, nor shall it dispose of any common green space or recreation facility without having established a successor entity to take over said property pursuant to the terms of the Montville Township Zoning Resolution, approved by the Montville Township Trustees. Membership in the Association shall be mandatory for all property owners within the Allotment.

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the Members, the Association's ownership of the Common Areas shall vest in the Members as tenants in common in proportion to their voting power

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ARTICLE XII

GENERAL PROVISIONS

Section 1 Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Common Area, the Lots, the Association, and the Members, their respective heirs, executors, administrators, successors and assigns.

Section 2 Enforcement In addition to any other remedies provided in this Declaration, Declarant, the Association, and each Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Member to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or any subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Member shall have the rights of action against each other for failure to comply with the provisions of the Instruments, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Member who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing or anything contained herein to the contrary, in the event of any dispute between the Association and any Member, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall be submitted to binding arbitration in accordance with and pursuant to the rules of the American Arbitration Association. The decision in such arbitration proceeding shall be conclusive and binding upon the parties and may be entered in any court of competent jurisdiction as a final judgment from which no appeal may be taken. The fees and expenses of arbitration shall be shared by the parties to the dispute in the inverse proportion to the respective amounts of the disputed matters which are resolved or decided in its favor. In the event the dispute does not involve matters dealing with money, the fees and expenses of arbitration shall be shared by the parties thereto as determined by the arbitrator.

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

Section 4 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed

* Section 4 Prohibited Amendments. No provision of this Declaration shall be amended in contravention of the Montville Township Zoning Resolution. Any such amendment shall be of no effect.

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Section 5 Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof

IN WITNESS WHEREOF, the undersigned have executed this instrument this 12 day of December . 2003

HEWITT BOGGS CO., INC , an
Ohio corporation

By Thomas G. Boggs
Thomas G Boggs, President

By James A. Hewitt
James A Hewitt, Secretary

STATE OF OHIO)
) SS
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said county and state, personally appeared the above-named Thomas G Boggs, President, and James A Hewitt, Secretary, respectively, of Hewitt Boggs Co , Inc , who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed and the free act and deed of such corporation.

IN TESTIMONY WHEREOF, I hereto set my hand and official seal, at Akron , Ohio, this 12th day of December, 2003.

James L Fisher
NOTARY PUBLIC
JAMES L FISHER, ATTY AT LAW
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R.C.

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THE WINDFALL RESERVE
LANDOWNERS ASSOCIATION, an Ohio
not-for-profit corporation

By *James A. Hewitt* President

STATE OF OHIO)
) SS
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said County and State, appeared the above-named THE WINDFALL RESERVE LANDOWNERS ASSOCIATION, an Ohio not-for-profit corporation, by James A Hewitt, its President, who acknowledged that he did sign the foregoing instrument and the same is his free act and deed, and the free act and deed of the corporation

IN TESTIMONY WHEREOF, I have set my hand and seal at Akron, Ohio, this 12th day of December, 2003.

James L Fisher
NOTARY PUBLIC

JAMES L FISHER, ATTY AT LAW
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147 03 R.C.

This instrument prepared by
James L Fisher
Attorney James L Fisher
(0001453)

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PROPERTY DESCRIPTION
44.6928 ACRES
PROJECT NO. 01-198

Situated in the Township of Montville, County of Medina, State of Ohio and known as being part of Montville Township Lot 105 further bounded and described as follows

Beginning at the northwest corner of Montville Township Lot 105, said point being the principal place of beginning of the parcel described herein;

Thence N 89° 19' 13" E, 1475 17 feet along the north line of said Lot 105 to a point,

Thence S 0° 52' 03" E, 324 00 feet to a point,

Thence N 89° 19' 13" E, 672.22 feet to a point in the east line of said Lot 105 being the centerline of C H. 101 Windfall Road (60 feet wide),

Thence S 0° 52' 03" E, 684 14 feet along the east line of said Lot 105 and the centerline of said C H. 101 to a point,

Thence S 89° 19' 27" W, 2147 20 feet to a point in the west line of said Lot 105,

Thence N 0° 52' 41" W, 1008 00 feet along the west line of said Lot 105 to the principal place of beginning and containing therein 44 6928 acres of land

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