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002302

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DECLARATION OF RESTRICTIONS  
FOXCLIFF ESTATES SOUTH

THIS DECLARATION made this 13th day of MAY, 1985,  
by NEWCORP, INC., an Indiana corporation (hereinafter referred to  
as the "Declarant"),

W I T N E S S E T H:

WHEREAS, the Declarant is the Owner of all of the lands con-  
tained in the area shown on Exhibit A, attached hereto and made a  
part hereof (hereinafter referred to as "Tract I"), and the Owner,  
together with others, of lands adjacent to the area shown on Exhibit  
A, which lands are shown and described on Exhibit B, attached hereto  
and made a part hereof (hereinafter referred to as "Tract II"),  
all of which lands will be subdivided and known as "Foxcliff Estates  
South" (hereinafter collectively referred to as the "Development"),  
and will be more particularly described on the plats of the various  
sections thereof recorded or to be recorded in the offices of the  
Recorder of Morgan County, Indiana;

WHEREAS, Tract II of the Development is currently subject to a  
declaration of covenants, conditions and restrictions recorded on  
April 10, 1981, in the Office of the Recorder of Morgan County,  
Indiana, at Deed Record 278, Page 469 (hereinafter referred to as  
the "Existing Restrictions");

WHEREAS, the Declarant is about to sell and convey the residen-  
tial Lots situated within the platted areas of the Development and  
before doing so desires to subject and impose upon all real estate  
within the platted areas of the Development mutual and beneficial  
restrictions, covenants, conditions and charges (hereinafter re-  
ferred to as the "Restrictions") under a general plan or scheme of  
improvement for the benefit and complement of the Lots and lands in  
the Development and the future Owners thereof;

WHEREAS, it is contemplated that the various plats contained  
within Tract II will be amended to provide that this Declaration  
will be substituted in toto for the Existing Restrictions and Tract  
II will thereby be subject to the Restrictions of this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the  
platted Lots and lands located within Tract I of the Development as  
they become platted and all of the platted Lots and lands located

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within Tract II, at such time as Tract II is annexed and this Declaration is substituted in toto for the Existing Restrictions, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. The Declarant specifically reserves unto itself the right and privilege, prior to the recording of any plat by the Declarant of a particular Lot or tract within the Development to exclude any real estate so shown from the Development, or to include additional real estate.

#### ARTICLE I

##### DEFINITIONS

Section 1. Association shall mean and refer to the Foxcliff Estates South Homeowner's Association, Inc., an Indiana not-for-profit corporation, its successors and assigns. Any action to be taken by the Association herein shall be done pursuant to authority from its Board of Directors.

Section 2. Owner or Lot Owner shall mean and refer to the record owner, whether one (1) or more persons or entities of a fee simple title to any Lot or Lots which are part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding the Declarant.

Section 3. Properties shall mean and refer to that certain real property described in Exhibit "A" and such additions thereto as may hereinafter be brought within the jurisdiction of the Association and the Declaration in the manner provided herein.

Section 4. Common Area shall mean and refer to (i) all portions of the Properties shown on any recorded subdivision plat which are not Lots, (ii) such portions of the Properties as are

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declared to be Common Area even though located on or constituting part of one or more Lots, (iii) such improvements located, installed or established in, to, on, under, across or through the Properties as are declared to be Common Area whether located, installed or established entirely or partially on Lots or portions of the Properties which are not Lots, or both; PROVIDED, HOWEVER, that (i) all streets shown on any recorded subdivision plat of the Properties and (ii) any lakes, dams, spillways and any drainage facilities which are located on, over, across or through the Properties shall, for all purposes, be considered a part of the Common Area. The golf course, clubhouse, swimming pool, and tennis courts (hereinafter referred to as "Recreation Facilities") shall not be a part of the Common Area unless hereafter specifically acquired by annexation or purchase. Tract I and Tract II do not include the Recreation Facilities.

Section 5. Declarant shall mean and refer to Newcorp, Inc., its successors and assigns.

Section 6. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area which plot is identified by number or other such designation.

Section 7. Mortgagee shall mean the institutional holder of a first mortgage or equivalent lien on any Lot or Lots.

## ARTICLE II

### DECLARATION; COMMON AREAS AND MAINTENANCE THEREOF

Section 1. Declaration. Declarant hereby expressly declares that the Properties shall be held, transferred, and occupied subject to these Restrictions. The Owner of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract

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and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other persons acknowledge the rights and powers of Declarant and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant and agree to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. Without limiting the generality of the foregoing, each Owner, his tenants, invitees and guests, shall have, and is hereby granted, a non-exclusive easement and right of ingress to, egress from and access between his Lot and any street shown on the subdivision plat, for pedestrian and vehicular traffic, upon, over and across the street shown, or to be shown, on a subdivision plat of the Properties and the several parts thereof. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery vehicles shall have the right to enter upon and use any street for ingress to, egress from and access between the Lots in the performance of their duties.

Section 3. Maintenance of Common Areas. Maintenance, repairs, replacements and upkeep of the Common Areas shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the expenses to be paid by the Assessments provided for in Article V hereof.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the

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Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be paid by the above Assessments, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the Assessment to which such Owner's Lot is subject.

The authorized representatives of the Association, shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Properties for such purposes.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Residential use. Each Lot is for single family residential purposes only, no building or structure intended for or adapted to business purposes and no apartment house, double house or other multiple-family dwelling shall be erected, placed, permitted or maintained on the Properties or on any part thereof. No improvement or structure whatever, other than a first-class, private dwellinghouse and customary out-buildings may be erected, placed or maintained on any Lots or premises.

A. No living unit shall be erected or permitted on any

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other than one-story structure, with a total area of not less than One Thousand Six Hundred (1,600) square feet; provided, however, that a smaller ground-floor area may be allowed by the Building Control Committee for any Lot where topography renders such restrictions impracticable.

B. All construction on Lots must be new. No building shall be moved onto said Lots. No trailer, mobile home, tent, uncovered basement, shack, garage, barn or other structure shall be placed or constructed on any of said Lots at any time for use as either a temporary or permanent residence or for any other purpose except incident to the construction and use of a living unit on such Lot.

C. All living units shall have inside bathroom facilities.

D. All living units shall be completed on the exterior within six (6) months from the date of commencement of construction as certified by the Building Control Committee. All living units shall be completed and the site graded and sodded, seeded or landscaped within one (1) year from the date of start of construction as certified above. During the period of construction, the Lot shall be kept and maintained in a sightly and orderly manner.

E. No septic systems or private wells shall be used if a central sewer and/or water system is available to the Lot. The Lot Owner of each Lot hereby agrees to pay such tap-on and service fees as are approved by the Public Service Commission of Indiana.

F. No living unit shall be located on the Lot nearer to the front line than the minimum set-back lines as shown on the recorded subdivision plat of such properties. No projection of any living unit shall be permitted to extend into or encroach upon the space between said building line and the street adjacent thereto except steps and platforms in front of the main

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subdivision plat of one or more sections of the Development. To the extent that the provisions of this Declaration are more restrictive than the Zoning Ordinance, the provisions of this Declaration shall control. Compliance with the Zoning Ordinance may be required for issuance, by those agencies of the state or local government having jurisdiction over such matters, of permits for the construction of improvements upon any Lot.

G. Any tank for storage of fuel placed on or maintained on any Lot outside of the living unit shall be located at least Two (2) feet below the surface of the ground. No refuse pile or other unsightly or objectionable material or thing shall be allowed or maintained on any Lot.

H. Any living unit, garage or other structure on any Lot which may in whole or in part, be destroyed by fire, windstorm or other natural cause, must be restored to its original condition or otherwise rebuilt with the approval of the Building Control Committee or the Lot restored to a sightly and natural condition within a reasonable time.

Section 2. An Owner shall keep all Lots owned by him and all improvements thereon, in good order and repair, free of debris, all in a manner and with such frequency as is consistent with good property management.

Section 3. Utility and drainage easements. Easements for installation and maintenance of public utilities and for the maintenance and correction of surface water drainage of a width of fifteen (15) feet along the front and rear lot lines and seven and one-half (7-1/2) feet along each side lot line are hereby reserved and run in favor of all public utilities. Such easements shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing walkways or driveways as approved by the Building Control Committee. All public utility service lines shall be placed underground and no outside electrical lines shall be placed

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Section 4. Golf course. Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the Lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to the recovery of golf balls from such Lots, the flight of golf balls over, along and through the airspace of such Lots, the use of necessary and usual equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with the other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a country club.

Section 5. Pets. No pets other than dogs, cats or other household domestic animals may be kept on any Lot. No animals may be raised or bred for commercial purposes and all animals shall be confined to the Lot of the Owner.

Section 6. Signs. No advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the Lot Owner upon request by the Declarant, shall be permitted. No other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the Declarant only when in his discretion, the same is necessary to promote the sale of property and in the development of the property. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining sign structures and offices as may be deemed necessary by him for the operation of the subdivision.

Section 7. All plans for the construction of private roads and driveways and all building plans for any building, fence, wall or structure to be erected on any Lot and the proposed location

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way, building, fence or other structure, or the exterior remodeling, reconstruction or alteration of such road, driveway or structure, the person desiring to erect, construct or modify the same shall submit to the Building Control Committee two (2) complete sets of road or driveway plans showing the locations and width of the same or two (2) complete sets of building plans and specifications for the building or other structure as is applicable so desired to be erected, constructed or modified. No structure of any kind, the plans, elevations and specifications of which have not received the written approval of the Building Control Committee and which does not comply fully with such approved plans and specifications shall be erected, constructed, placed or maintained on any Lot. Approval of such plans and specifications shall be evidenced by the written endorsement on such plans and specifications a copy of which shall be delivered to the Lot Owner or Owners of the Lot upon which the prospective building, road or driveway or other structure is contemplated prior to the beginning of such construction. No changes or deviations in and from such plans and specifications as approved shall be made without the prior written consent of the Building Control Committee. The Building Control Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications. Approval of plans and specifications shall not be unreasonably withheld as to any planned roadway or structure which reasonably conforms with the provisions of these Declarations, such additional regulations as the Building Control Committee may from time to time, adopt and the general development scheme of the subdivision. Provisions with regard to the organization of the Building Control Committee are set forth herein, in Article IV, Section 3.

Section 8. Letter and delivery boxes. The Building Control

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Section 9. Owner's easement of enjoyment. Every Lot Owner shall have a right to an easement of enjoyment in and to the Common Areas which shall be appertinent to and shall pass with the title to every Lot subject to the following provisions.

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, if any.

B. The right of the Association to suspend the voting rights and the right to use the recreational facilities, if any, by any Lot Owner for any period during which any assessment against his Lot remains unpaid and for a period not in excess of sixty (60) days for any infraction of its published rules and regulations. Any Lot Owner may delegate in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 10. Title to any Lot abutting a lake shall extend only to the shore line of such lake as said shore line is shown on any recorded subdivision plat. Easements are created hereby in favor of the Declarant and the Association within fifteen (15) feet of the shore line of any lake within the Properties for all purposes in connection with operating and maintaining such lake and any dam and related facilities thereon, including, but not limited to: grading, filling, excavating, and dredging; and installing, operating, maintaining, repairing, replacing, and patrolling facilities necessary to control erosion or protect and maintain such lake and dam and the quantity or quality of the water supply therein. No waste oil, or other deleterious material shall be discharged, and no trash, garbage or debris shall be dumped in or upon the Properties or into any lake, nor shall any septic or waste disposal system be installed which discharges any effluent or substance of any kind into or upon the Properties, nor shall the Properties be used in any manner which causes or might cause contamination of

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that will cause or promote erosion of the banks. No boat docks, floats or other structures extending into any lake shall be constructed or placed into or on said lake without the prior approval of the Building Control Committee. Declarant, its grantees, successors in interest, invitees, or the invitees of its grantees or successors in interest may use any lake for all water-related recreational uses, such as boating, swimming, fishing, ice boating, and ice skating. Rules and regulations for the use of the lake that are necessary for the promotion of safety and recreational uses of the lake shall be made from time to time by the Association. Declarant shall not be liable to any person for any damage either to person or to property caused by or resulting from the use of the lake or activity thereon by Declarant, its employees, successors in interest, sublicensees, concessionaires, agents, invitees, or permittees and not caused or contributed to by any act of the Declarant or any of its agents, employees, or invitees.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Lot Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Membership shall automatically transfer with the transfer of fee simple title to any Lot and the membership rights of the transferor shall also be transferred.

Section 2. The Association shall have two (2) classes of voting membership:

CLASS A: Class A members shall be all Owners except the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in

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the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Section 3. The Building Control Committee. A Building Control Committee consisting of three (3) or more persons as provided in the By-Laws of the Association shall be appointed by the Board of Directors.

The Building Control Committee shall regulate the external design, appearance, use, location and maintenance of the Properties and of the improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and natural vegetation and topography.

No improvements, alterations, repairs, excavations, changes in grade, or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the original Declarant to any Owner or which exist as of the date of the recording of this Declaration, shall be made or done without the prior written approval of the Building Control Committee, except as otherwise expressly provided in this Declaration. No building, sign, fence, wall, residence, or other structure shall be commenced, erected, maintained, improved, repaired, altered, made or done without the prior written approval of the Building Control Committee.

In the event that the Building Control Committee fails to approve, modify, or disapprove in writing an application within thirty (30) days after notice of such application has been given to Building Control Committee, approval will be deemed granted. A decision of the Building Control Committee may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors. If the Board of Directors fails to approve in writing the decision of the Building Control Committee within thirty (30) days after notice of appeal has

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activities of the Building Control Committee.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and personal obligation of assessments. The Declarant for each Lot owned within the Properties whereby covenants and each Lot Owner of any Lot by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. Annual or monthly assessments or charges.
- B. Special assessments for capital improvements.
- C. Special assessments as may otherwise be provided herein, such assessments to be established and collected as hereinbefore provided.

The annual and special assessments, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the Lot Owner of such property at the time the assessment fell due. The obligation for delinquent assessments shall pass to any successor in title. Nothing in this Declaration shall prohibit the proper authority from assessing charges at an annual rate and expressing such assessment in terms of monthly payments, rates or assessments. The lien created by the assessment pursuant to this Declaration shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made except as may otherwise be provided herein.

Section 2. Purpose of assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the common areas and for other purposes as specifically provided herein.

Section 3. Maximum annual assessment. Commencing January 1, 1986 and continuing until December 31, 1987, the annual assessment

(2000.00) except for Lots

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lished by the Association but may not be increased each year by more than Ten percent (10%) above the maximum annual assessment for the previous year without an affirmative vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

The Board of Directors may fix a monthly or quarterly installment for the payment of an annual assessment at an amount which on an annual basis is not in excess of the maximum set forth above.

Section 4. Special assessment for capital improvements. In addition to the annual assessments authorized above, the Association may levy 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 construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and quorum for any action authorized under Sections 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all votes of each class of membership 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 the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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(25%) of the rate for Lots owned by the Owners when such Lots are placed of record by plat.

Section 7. Date of commencement of annual assessments: Due Dates. The annual assessment provided for herein shall be adjusted pro rata according to the number of months remaining in the calendar year in which the Lot is purchased from Declarant. Written notice of annual and special assessments shall be sent to every Lot Owner subject thereto. The due dates for all assessments shall be established by the board of directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on any Lot have been paid.

Section 8. Effect of non-payment of assessments, remedies of the association. If any assessment or monthly installment of such assessment, if applicable, is not paid on the date when due, then the entire unpaid assessment shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the Lot subject to the assessment binding upon the then-owner, his heirs, devisees, successors and assigns. The obligation of the then Lot Owner of the Lot to pay such assessments shall pass to any successors in title.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate of interest established each year by the board of directors of the association, but not less than twelve percent (12%) per annum and the Association may bring an action at law against the Lot Owner obligated to pay the same or to foreclose the lien against the property, or both and there shall be added to the amount of such assessment, interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action and any expenses related to

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Section 9. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage which is for the construction or purchase of a residence thereon. Such Mortgagee taking title to and the right of possession of a unit by foreclosure or by assignment or deed in lieu of foreclosure, or any purchaser at a foreclosure sale shall take said unit free and clear of any claim for unpaid assessments and charges accruing prior to the time such Mortgagee takes title to the unit, except that said unit shall be subject to the lien of assessment resulting from the pro-rata reallocation of such unpaid charges and assessments and all such charges and assessments accruing after the Mortgagee has taken title to the unit. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Collection by Mortgagee. Nothing in this Declaration shall be construed as prohibiting any first Mortgagee from collecting the assessments due as a part of or in addition to any monthly payment due the Mortgagee provided any Mortgagee collecting assessments from any other Lot Owner shall pay said assessments when they become due.

#### ARTICLE VI

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association or its successor and any individual Lot Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or its successor, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability in validation of any one of these cove-

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Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by no less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by no less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded; provided, however, the Declarant may amend the terms, covenants and restrictions of this Declaration at any time during the first ten (10) years from the date hereof with the consent of the association. Any other provision of this section to the contrary, notwithstanding, the Declarant shall not be entitled to amend this Declaration after such time as the Declarant no longer holds any interest in the Properties covered hereunder or in any Properties adjacent or contiguous thereto.

Section 4. Annexation of additional property.

A. Additional land adjacent to the Properties and owned or controlled by the Declarant may be annexed by the Declarant at any time within ten (10) years from the date of recording of this instrument. Said annexation shall be effective upon the Declarant recording an instrument referring to this Declaration describing the property to be annexed and submitting said property to the provisions of this Declaration. Adjacent land includes land separated from the Properties by a street, road, stream, easement or similar monument or structure.

B. Tract II or any part thereof may be annexed at any time within ten (10) years from the date of recording of this instrument. Said annexation shall be effective upon the recording of an instrument referring to this Declaration and submitting said property to this Declaration.

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connection with the development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in the Declarant includes, but is not limited to the right to maintain models, erect signs, maintain an office, staff the office with employees and to use any and all of the common areas, and to show Lots then unsold. Any improvements placed on the Properties for the purpose of such sales, such as signs, telephones or other promotional items, shall not be considered a part of the common area nor attachments thereto, but shall remain the property of the Declarant. When Declarant no longer owns any Lot and no longer has the right to annex adjacent land, whichever shall occur later, the rights of Declarant under this Declaration shall thereupon terminate.

Section 2. Declarant's easement for adjoining property.

Certain other Properties may be annexed to the Properties as provided in Article VI, Section 4 hereof. Declarant reserves unto itself, its successors and assigns, a non-exclusive easement over the roadways of the Properties in order to provide access through the Properties to and from such adjoining property. Declarant further reserves the right to connect to, extend and utilize the utilities that will be located on the Properties. Declarant further reserves the right to permit future Owners of all or any portion of such adjoining property to use the recreational facilities of the common area provided that such persons pay a pro rata share of the operating and maintenance cost of such recreational facilities and that all persons having the right to use the same shall abide by the reasonable rules and regulations adopted by the Association governing such use.

Section 3. Construction and sale period. Notwithstanding any provision contained herein to the contrary, it shall be expressly permissible for the Declarant to maintain during the period of improvement and sale of Lots, upon such portion of the Properties

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Section 4. Conveyance of the common areas. The Declarant shall convey the common areas to the Association at such time as the Declarant deems appropriate but under no condition later than that date upon which the Declarant no longer owns any Lot or any adjacent land subject to annexation under Section 4 of Article VI.

NEWCORP, INC.,  
an Indiana corporation

By: Bruce A. Wooldridge  
Bruce A. Wooldridge, President

ATTEST:

Benton R. Millis  
Benton R. Millis, Secretary



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## EXHIBIT "A"

The following described real estate located in a part of the Northwest Quarter of Section 23, Township 12 North, Range 1 East, Washington Township, Morgan County, Indiana:

Beginning at the northwest corner of Lot 611, "Foxcliff Estates South", Section 30; thence North 16 degrees 41 minutes 21 seconds West 64.69 feet; thence North 15 degrees 25 minutes 00 seconds West 900.00 feet; thence North 36 degrees 12 minutes 15 seconds West 67.43 feet; thence North 56 degrees 59 minutes 30 seconds West 376.63 feet; thence North 33 degrees 00 minutes 30 seconds East 663.89 feet; thence North 24 degrees 41 minutes 04 seconds East 70.94 feet; thence South 73 degrees 38 minutes 23 seconds East 200.00 feet to a point on a curve on the western boundary of "Foxcliff Estates South", Section 30; (the following 7 courses being along said Foxcliff Estates South); thence Southwesterly 129.30 feet along an arc to the right and having a radius of 445.00 feet and subtended by a long chord having a bearing of South 24 degrees 41 minutes 04 seconds West and a length of 128.85 feet; thence South 33 degrees 00 minutes 30 seconds West 463.89 feet; thence South 56 degrees 59 minutes 30 seconds East 176.63 feet to a point of curvature; thence Southeasterly 214.06 feet along an arc to the right and having a radius of 295.00 feet and subtended by a long chord having a bearing of South 36 degrees 12 minutes 15 seconds East and a length of 209.39 feet; thence South 15 degrees 25 minutes 00 seconds East 968.83 feet to a point of curvature; thence Southeasterly 19.83 feet along an arc to the right and having a radius of 945.00 feet and subtended by a long chord having a bearing of South 14 degrees 48 minutes 49 seconds East and a length of 19.83 feet to the northeast corner of said Lot 611; thence South 75 degrees 47 minutes 22 seconds West 195.00 feet along said Lot 611 to the point of beginning and containing 9.50 acres more or less.

## ALSO INCLUDING THE FOLLOWING DESCRIBED REAL ESTATE:

Beginning at the southwest corner of Lot 612, "Foxcliff Estates South", Section 30; (the following 3 courses being along the boundary of said Foxcliff Estates South); thence North 89 degrees 03 minutes 29 seconds East 200.00 feet to a point on a curve; thence Southerly 25.40 feet along an arc to the right and having a radius of 950.00 feet and subtended by a long chord having a bearing of South 00 degrees 10 minutes 30 seconds East and a length of 25.40 feet; thence North 88 degrees 06 minutes 30 seconds East 279.80 feet; thence South 06 degrees 48 minutes 40 seconds East 120.28 feet; thence South 45 degrees 00 minutes 00 seconds East 180.00 feet to a point of curvature; thence Southerly 1178.10 feet along an arc to the right and having a radius of 750.00 feet and subtended by a long chord having a bearing of South 00 degrees 00 minutes 00 seconds East and a length of 1060.66 feet; thence South 45 degrees 00 minutes 00 seconds West 100.00 feet; thence South 71 degrees 33 minutes 37 seconds West 223.64 feet; thence North 45 degrees 00 minutes 00 seconds West 250.00 feet; thence North 18 degrees 26 minutes 23 seconds East 223.64 feet; thence North 45 degrees 00 minutes 00 seconds East 100.00 feet to a point of curvature; thence Northerly 471.24 feet along an arc to the left and having a radius of 300.00 feet and subtended by a long chord having a

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All of which shall hereafter be known as Section XXXVII,  
Foxcliff Estates South Subdivision, Morgan County, Indiana;

AND ALSO INCLUDING: A part of the Northwest Quarter of Section  
23, Township 12 North, Range 1 East, Washington Township,  
Morgan County, Indiana, more fully described as:

Beginning at the Northwest Corner of Lot 699 in "Foxcliff Estates South"  
Section 34; thence South 00 degrees 00 minutes East 490.7 feet to the  
Southwest corner of Lot 698 in said "Foxcliff Estates South" Section 34;  
thence South 88 degrees 37 minutes West 1034.80 feet to a stone at the  
southeast corner of the west half of the northwest quarter of said  
section 23; thence with the south line of said west half of the  
northwest quarter South 98 degrees 48 minutes West 852.7 feet to the  
southeast corner of "Foxcliff Estates South" Section 35; thence North 15  
degrees 02 minutes East 329.0 feet; thence along a curve to the left for  
a distance of 208.7 feet, said curve having a radius of 230 feet and a  
long chord with a bearing and length of South 74 degrees 00 minutes  
East 201.65 feet; thence North 80 degrees 00 minutes East 50.0 feet;  
thence North 10 degrees 00 minutes West 97.85 feet; thence along a  
curve to the left for a distance of 209.4 feet; said curve having a  
radius of 400 feet and a long chord with a bearing and length of  
North 25 degrees 00 minutes West 207.1 feet; thence North 40 degrees 00  
minutes West 77.0 feet; thence along a curve to the right for a  
distance of 231.5 feet; said curve having a radius of 180.6 feet and a  
long chord with a bearing and length of North 03 degrees 16½ minutes  
West 216.1 feet; thence North 33 degrees 27½ minutes East 440.34 feet;  
thence along a curve to the left for a distance of 92.1 feet; said curve  
having a radius of 375 feet and a long chord with a bearing and  
length of North 26 degrees 26 minutes East 91.8 feet; thence South 78  
degrees 27 minutes East 56.3 feet; thence along a curve to the left for  
a distance of 278.9 feet; said curve having a radius of 382.5 feet and  
a long chord with a bearing and length of North 80 degrees 40 minutes  
East 272.75 feet; thence South 30 degrees 13½ minutes East 265.0 feet to  
the shoreline of an existing lake; thence following said shoreline in a  
counter-clockwise direction to a point bearing North 58 degrees 41  
minutes East 376.4 feet from the last described point; thence North 54  
degrees 00 minutes East 90.00 feet; thence North 12 degrees 00 minutes  
00 seconds West 74.00 feet; thence North 89 degrees 23 minutes 52  
seconds East 165.17 feet; thence South 00 degrees 36 minutes 08 seconds  
East 37.92 feet; thence North 89 degrees 23 minutes 52 seconds East  
241.24 feet; thence South 08 degrees 24 minutes 12 seconds East 50.32  
feet; thence South 13 degrees 36 minutes 08 seconds East 809.89 feet to  
the point of beginning and containing 45.5 acres more or less.

Which shall hereafter be known as Section XXXVIII, Foxcliff  
Estates South Subdivision, Morgan County, Indiana.

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## EXHIBIT "B"

The following described real estate in Morgan County, Indiana:

The Northeast quarter of the Northeast quarter of Section 22; the Northwest quarter of the Northwest quarter, the West half of the Northeast quarter, and the East half of the Northwest quarter of Section 23, all of Township 12 North, Range 1 East; and ten (10) acres off of the South end of the East half of the Southwest quarter of Section 14, Township 12 North, Range 1 East, containing 250 acres, more or less.

ALSO: The Southwest quarter of the Northwest quarter of Section 23, and the Southeast quarter of the Northeast quarter of Section 22, all in Township 12 North, Range 1 East, containing 80 acres, more or less.

ALSO: Sixty (60) acres off of the South end of the West half of the Southwest quarter of Section 14, Township 12 North, Range 1 East.

ALSO: The East half of the Southwest quarter of Section 14, Township 12 North, Range 1 East, except twenty (20) acres off of the North end thereof and except ten (10) acres off of the south end thereof, containing exclusive of said exceptions, fifty (50) acres, more or less,

which real estate includes the following Sections in Foxcliff Estates South Subdivision per the below-referenced plats all of which were recorded in the Office of the Recorder of Morgan County, Indiana:

- (a) Section 30 which was recorded on or about March 29, 1974 at Deed Record 238, page 322;
- (b) Section 31 which was recorded on or about April 8, 1981 at Deed Record 278, page 461;
- (c) Section 32 which was recorded on or about July 21, 1981 at Deed Record 280, page 383 and re-recorded on or about July 28, 1981 at Deed Record 280, page 471;
- (d) Section 33 which was recorded on or about March 24, 1982 at Deed Record 284, page 38;
- (e) Section 34 which was recorded on or about March 24, 1982 at Deed Record 284, page 39;
- (f) Section 35 which was recorded on or about July 14, 1982 at Deed Record 285, page 149; and
- (g) Section 36 which was recorded on or about October 6, 1982 at Deed Record 286, page 155.

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Page Two

The Northeast quarter of the Northeast quarter of Section 22; the Northwest quarter of the Northwest quarter, the West half of the Northeast quarter, and the East half of the Northwest quarter of Section 23, all of Township 12 North, Range 1 East; and ten (10) acres off of the South end of the East half of the Southwest quarter of Section 14, Township 12 North, Range 1 East, containing 250 acres, more or less.

ALSO: The Southwest quarter of the Northwest quarter of Section 23, and the Southeast quarter of the Northeast quarter of Section 22, all in Township 12 North, Range 1 East, containing 80 acres, more or less.

ALSO: Sixty (60) acres off of the South end of the West half of the Southwest quarter of Section 14, Township 12 North, Range 1 East.

ALSO: The East half of the Southwest quarter of Section 14, Township 12 North, Range 1 East, except twenty (20) acres off of the North end thereof and except ten (10) acres off of the south end thereof, containing exclusive of said exceptions, fifty (50) acres, more or less,

EXCEPTING THEREFROM: The following Sections in Foxcliff Estates South Subdivision per the below-referenced plats all of which were recorded in the Office of the Recorder of Morgan County, Indiana:

- (a) Section 30 which was recorded on or about March 29, 1974 at Deed Record 238, page 322;
- (b) Section 31 which was recorded on or about April 8, 1981 at Deed Record 278, page 461;
- (c) Section 32 which was recorded on or about July 21, 1981 at Deed Record 280, page 383 and re-recorded on or about July 28, 1981 at Deed Record 280, page 471;
- (d) Section 33 which was recorded on or about March 24, 1982 at Deed Record 284, page 38;
- (e) Section 34 which was recorded on or about March 24, 1982 at Deed Record 284, page 39;
- (f) Section 35 which was recorded on or about July 14, 1982 at Deed Record 285, page 149; and
- (g) Section 36 which was recorded on or about October 6, 1982 at Deed Record 286, page 155.

AND FURTHER EXCEPTING THEREFROM: A part of the Northwest Quarter of Section 23, Township 12 North, Range 1 East, Washington Township, Morgan County, Indiana, described as follows:

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Page Three

## TRACT NO. 1

Beginning at the northwest corner of Lot 611, "Foxcliff Estates South", Section 30; thence North 18 degrees 41 minutes 21 seconds West 86.69 feet; thence North 15 degrees 25 minutes 00 seconds West 900.00 feet; thence North 36 degrees 12 minutes 15 seconds West 67.43 feet; thence North 50 degrees 59 minutes 30 seconds West 376.63 feet; thence North 30 degrees 00 minutes 30 seconds East 663.89 feet; thence North 24 degrees 41 minutes 04 seconds East 70.94 feet; thence South 73 degrees 38 minutes 23 seconds East 200.00 feet to a point on a curve on the western boundary of "Foxcliff Estates South", Section 30; (the following 7 courses being along said Foxcliff Estates South); thence Southwesterly 129.30 feet along an arc to the right and having a radius of 445.00 feet and subtended by a long chord having a bearing of South 24 degrees 41 minutes 04 seconds West and a length of 128.85 feet; thence South 33 degrees 00 minutes 30 seconds West 463.89 feet; thence South 56 degrees 59 minutes 30 seconds East 176.63 feet to a point of curvature; thence Southeasterly 214.06 feet along an arc to the right and having a radius of 295.00 feet and subtended by a long chord having a bearing of South 36 degrees 12 minutes 15 seconds East and a length of 209.39 feet; thence South 15 degrees 25 minutes 00 seconds East 968.83 feet to a point of curvature; thence Southeasterly 19.83 feet along an arc to the right and having a radius of 945.00 feet and subtended by a long chord having a bearing of South 14 degrees 48 minutes 49 seconds East and a length of 19.83 feet to the northeast corner of said Lot 611; thence South 75 degrees 47 minutes 22 seconds West 195.00 feet along said Lot 611 to the point of beginning and containing 9.50 acres more or less.

## TRACT NO. 2

Beginning at the southwest corner of Lot 612, "Foxcliff Estates South", Section 30; (the following 3 courses being along the boundary of said Foxcliff Estates South); thence North 89 degrees 03 minutes 29 seconds East 200.00 feet to a point on a curve; thence Southerly 25.40 feet along an arc to the right and having a radius of 950.00 feet and subtended by a long chord having a bearing of South 00 degrees 10 minutes 30 seconds East and a length of 25.40 feet; thence North 88 degrees 06 minutes 30 seconds East 279.80 feet; thence South 06 degrees 48 minutes 40 seconds East 120.28 feet; thence South 45 degrees 00 minutes 00 seconds East 180.00 feet to a point of curvature; thence Southerly 1178.10 feet along an arc to the right and having a radius of 750.00 feet and subtended by a long chord having a bearing of South 00 degrees 00 minutes 00 seconds East and a length of 1060.66 feet; thence South 45 degrees 00 minutes 00 seconds West 100.00 feet; thence South 71 degrees 33 minutes 37 seconds West 223.64 feet; thence North 45 degrees 00 minutes 00 seconds West 250.00 feet; thence North 18 degrees 26 minutes 23 seconds East 223.64 feet; thence North 45 degrees 00 minutes 00 seconds East 100.00 feet to a point of curvature; thence Northerly 471.24 feet along an arc to the left and having a radius of 300.00 feet and subtended by a long chord having a bearing of North 00 degrees 00 minutes 00

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EXHIBIT "B"  
Page Four

Which Tracts are further known as Section 37, Foxcliff Estates South Subdivision, as per the plat thereof recorded in the Office of the Recorder of Morgan County, Indiana, on or about \_\_\_\_\_, 1985, at Deed Record \_\_\_\_\_, page \_\_\_\_\_.

AND FURTHER EXCEPTING THEREFROM: A part of the Northwest Quarter of Section 23, Township 12 North, Range 1 East, Washington Township, Morgan County, Indiana, described as follows:

Beginning at the Northwest Corner of Lot 699 in "Foxcliff Estates South" Section 34; thence South 00 degrees 00 minutes East 490.7 feet to the Southwest corner of Lot 698 in said "Foxcliff Estates South" Section 34; thence South 88 degrees 37 minutes West 1034.80 feet to a stone at the southeast corner of the west half of the northwest quarter of said section 23; thence with the south line of said west half of the northwest quarter South 88 degrees 48 minutes West 852.7 feet to the southeast corner of "Foxcliff Estates South" Section 35; thence North 15 degrees 02 minutes East 329.0 feet; thence along a curve to the left for a distance of 208.7 feet, said curve having a radius of 230 feet and a long chord with a bearing and length of South 74 degrees 00 minutes East 201.65 feet; thence North 80 degrees 00 minutes East 50.0 feet; thence North 10 degrees 00 minutes West 97.85 feet; thence along a curve to the left for a distance of 209.4 feet; said curve having a radius of 400 feet and a long chord with a bearing and length of North 25 degrees 00 minutes West 207.1 feet; thence North 40 degrees 00 minutes West 77.0 feet; thence along a curve to the right for a distance of 231.5 feet; said curve having a radius of 180.6 feet and a long chord with a bearing and length of North 03 degrees 16 1/4 minutes West 216.1 feet; thence North 33 degrees 27 1/2 minutes East 440.34 feet; thence along a curve to the left for a distance of 92.1 feet; said curve having a radius of 375 feet and a long chord with a bearing and length of North 26 degrees 26 minutes East 91.8 feet; thence South 78 degrees 27 minutes East 56.3 feet; thence along a curve to the left for a distance of 278.9 feet; said curve having a radius of 382.5 feet and a long chord with a bearing and length of North 20 degrees 40 minutes East 272.75 feet; thence South 30 degrees 13 1/2 minutes East 265.0 feet to the shoreline of an existing lake; thence following said shoreline in a counter-clockwise direction to a point bearing North 58 degrees 41 minutes East 376.4 feet from the last described point; thence North 54 degrees 00 minutes East 90.00 feet; thence North 12 degrees 00 minutes 00 seconds West 74.00 feet; thence North 89 degrees 23 minutes 52 seconds East 165.17 feet; thence South 00 degrees 36 minutes 08 seconds East 37.92 feet; thence North 89 degrees 23 minutes 52 seconds East 241.24 feet; thence South 08 degrees 24 minutes 12 seconds East 50.32 feet; thence South 13 degrees 36 minutes 08 seconds East 809.89 feet to the point of beginning and containing 45.5 acres more or less.

Which Tract is further known as Section 38, Foxcliff Estates South Subdivision, as per the plat thereof recorded in the office of the Recorder of Morgan County, Indiana, on or about \_\_\_\_\_, 1985, at Deed Record \_\_\_\_\_, page \_\_\_\_\_.

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FOR RECORD

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FOXCLIFF ESTATES SOUTH  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Foxcliff, Inc., hereinafter referred to as "Declarant";

WITNESSETH

WHEREAS, Declarant is the owner of certain property in Morgan County, Indiana, which is more particularly described in Exhibit "A" attached hereto and made by this reference, a part hereof. NOW THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants, assessments and conditions which are for the purpose of protecting the value and desirability of the real property and which shall run with the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Association shall mean and refer to the Foxcliff Estates South Homeowner's Association, Inc., an Indiana not-for-profit corporation, its successors and assigns. Any action to be taken by the Association herein shall be done by its board of directors.

Section 2. Owner shall mean and refer to the record owner, whether one (1) or more persons or entities of a fee simple title to any lot or lots which are part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding the declarant.

Section 3. Properties shall mean and refer to that certain real property described in Exhibit "A" and such additions thereto as may hereinafter be brought within the jurisdiction of the Association and the Declaration in the manner provided herein.

Section 4. Common Area shall mean all property owned or to be owned pursuant to Article II, Section 10, by the Association for the common use and enjoyment of the owners and designated as such on any recorded plat of the properties.

Section 5. Declarant shall mean and refer to Foxcliff, Inc., and its successors and assigns, and each successor or assigns shall

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Section 7. Mortgagee shall mean the institutional holder of a first mortgage or equivalent lien on any lot or lots.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Residential use. Each lot is for single family residential purposes only, no building or structure intended for or adapted to business purposes and no apartment house, double house or other multiple-family dwelling shall be erected, placed, permitted or maintained on the properties or on any part thereof. No improvement or structure whatever, other than a first-class, private dwelling-house and customary out-buildings may be erected, placed or maintained on any lots or premises.

A. No living unit shall be erected or permitted on any lot, the ground-floor area of which exclusive of porches, terraces, or garages is less than One Thousand, Two Hundred (1,200) square feet, in the case of a one-story structure or less than One Thousand (1,000) square feet in the case of a structure other than one-story structure with a total area of not less than One Thousand Six Hundred (1,600) square feet; provided, however, that a smaller ground-floor area may be allowed by the building control committee for any lot where topography renders such restrictions impracticable.

B. All construction on lots must be new. No building shall be moved onto said lots. No trailer, mobile home, tent, uncovered basement, shack, garage, barn or other structure shall be placed or constructed on any of said lots at any time for use as either a temporary or permanent residence or for any other purpose except incident to the construction and use of a living unit on such lot.

C. All living units shall have inside bathroom facilities.

D. All living units shall be completed on the exterior within six (6) months from the date of commencement of construction as certified by the building control committee. All living units shall be completed and the site graded and sodded, seeded or landscaped within one (1) year from the date of start of construction as certified above. During the period of construction, the lot shall be kept and maintained in a sightly and orderly manner.

E. No new construction or exterior alterations to a lot shall be approved by the building control committee and no construction shall commence on any lot unless and until complete plans and specifications for the installation of septic or other

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system is extended to any improved lot upon which an existing septic or other private sewer disposal system is located, the owner of said lot shall tap onto such system at his expense within one (1) year of the date of completion of said extension as certified by the building control committee, and the owner of each lot hereby agrees to pay such tap-on and service fees as are approved by the Public Service Commission of Indiana.

F. No living unit shall be located on the lot nearer to the front line or side line than the minimum set-back lines as shown on any recorded subdivision map of such properties. No projection of any living unit shall be permitted to extend into or encroach upon the space between said building line and the street adjacent thereto except steps and platforms in front of the main door may extend over said line not to exceed five (5) feet. No boat docks, floats or other structures extending into any lake shall be constructed or placed into or on said lake without the prior approval of the building control committee.

G. Any tank for storage of fuel placed on or maintained on any lot outside of the living unit shall be located at least Two (2) feet below the surface of the ground. No refuse pile or other unsightly or objectionable material or thing shall be allowed or maintained on any lot.

H. Any living unit, garage or other structure on any lot which may in whole or in part, be destroyed by fire, windstorm or other natural cause, must be restored to its original condition or otherwise rebuilt with the approval of the building control committee or the lot restored to a sightly and natural condition within a reasonable time.

Section 2. To the extent that exterior maintenance is not provided for, an owner shall keep all lots owned by him and all improvements thereon, in good order and repair, free debree, all in a manner and with such frequency as is consistent with good property management.

Section 3. Public health and safety easements. An easement is hereby created for the benefit of and granted to all police, fire protection, school, ambulance, postal service, delivery vehicles and all similar persons to enter upon the roadways or common area in the performanace of their duties.

Section 4. Utility and drainage easements. Easements for installation and maintenance of public utilities and for the maintenance and correction of surface water drainage are hereby reserved for a distance of fifteen (15) feet adjacent to any front, side or rear lot line and run in favor of all public utilities. All public utility service lines shall be placed

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of such lake including the right to remove any trees or bushes necessary for the maintenance and preservation of such lake.

Section 5. Golf course. Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to the recovery of golf balls from such lots, the flight of golf balls over and along such lots, the use of necessary and usual equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with the other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a country club.

Section 6. Pets. No pets other than dogs, cats or other household domestic animals may be kept on any lot. No animals may be raised or bred for commercial purposes and all animals shall be confined to the lot of the owner.

Section 7. Signs. No advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lotowner upon request by the Declarant, shall be permitted. No other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the Declarant only when in his discretion, the same is necessary to promote the sale of property in and the development of the property. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining sign structures and offices as may be deemed necessary by him for the operation of the subdivision.

Section 8. All plans for the construction of private roads and driveways and all building plans for any building, fence, wall or structure to be erected on any lot and the proposed location thereof upon any lot and any changes after approval thereof, any exterior remodeling, reconstruction, alteration or addition to any building, road or driveway or other structure upon any lot in the property shall require the approval in writing of the building control committee. Before beginning the construction of any driveway, building, fence or other structure, or the exterior remodeling, reconstruction or alteration of such road, driveway or structure, the person desiring to erect, construct or modify the same shall submit to the building control committee two (2) complete sets of road or driveway plans showing the locations and width of the same or to two (2) complete sets of building

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specifications shall be evidenced by the written endorsement on such plans and specifications a copy of which shall be delivered to the owner or owners of the lot upon which the perspective building, road or driveway or other structure is contemplated prior to the beginning of such construction. No changes or deviations in and from such plans and specifications as approved shall be made without the prior written consent of the building control committee. The building control committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications. Approval of plans and specifications shall not be unreasonably withheld as to any planned roadway or structure which reasonably conforms with the provisions of these Declarations, such additional regulations as the building control committee may from time to time, adopt and the general development scheme of the subdivision. Provisions with regard to the organization of the building control committee are set forth herein, in Article III, Section 9.

Section 9. Letter and delivery boxes. The building control committee shall determine the location, color, size, design, lettering and all other particulars of all mail or paper delivery boxes and standards, brackets and namesigns for such boxes in order that the area be strictly uniform in appearance with respect thereto.

Section 10. Owner's easement of enjoyment. Every owner shall have a right to an easement of enjoyment in and to the common areas which shall be appertinent to and shall pass with the title to every lot subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area, if any.

B. The right of the Association to suspend the voting rights and the right to use the recreational facilities, if any, by any owner for any period during which any assessment against his lot remains unpaid and for a period not exceeds sixty (60) days for any infraction of its published rules and regulations. Any owner may delegate in accordance with the by-laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the

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Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners except the Declarant and shall be entitled to one (1) vote for each lot owned. When more than one (1) person owns an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Class B. Class B members shall be the Declarant and shall be entitled to two (2) votes for each lot owned. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and personal obligation of assessments. The Declarant for each lot owned within the properties, whereby covenants and each owner of any lot by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. Annual or monthly assessments or charges.
- B. Special assessments for capital improvements.
- C. Special assessments as may otherwise be provided herein,

such assessments to be established and collected as hereinbefore provided.

The annual and special assessments, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them. Nothing in this Declaration shall prohibit the proper authority from assessing charges at an annual rate and expressing such assessment in terms of monthly payments, rates or assessments. The lien created by the assessment pursuant to this Declaration shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made except as may otherwise be provided herein.

Section 2. Purpose of assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common areas and for other purposes as specifically provided herein.

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The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum set forth above. The annual assessment may be billed on a monthly basis and the amount payable monthly shall be computed by dividing the annual assessment by twelve (12), if not otherwise stated.

Section 4. Assessment for sewer and water availability. There is hereby imposed on each unimproved lot, an assessment in the amount of Fifteen Dollars (\$15.00) per month for sewer and water availability. Such assessment shall become effective on the first day of the month following certification by the Summit City Utility Corporation to the Association that sewer and water services are available to any unimproved lots. Unimproved lots to which sewer and water services have not been extended or improved lots shall not be subject to this assessment. The purpose of the assessment shall be to generate funds and to enable the Association to enter into a contract with the Summit City Utility Corporation designed to encourage the extension of sewers and water lines into new areas of the properties and to defray the costs of maintenance thereof.

Section 5. Special assessment for capital improvements. In addition to the annual assessments authorized above, the association may levy 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 construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and quorum for any action authorized under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all votes of each class of membership 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 the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of assessment. Both annual and special assessments

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pro-rata, according to the number of months remaining in a calendar year. Written notice of annual and special assessments shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the board of directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on any lot have been paid.

Section 9. Effect of non-payment of assessments, remedies of the association. If any assessment or monthly installment of such assessment, if applicable, is not paid on the date when due, then the entire unpaid assessment shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on the lot subject to the assessment binding upon the then-owner, his heirs, devisees, successors and assigns. The personal obligation of the then-owner of the lot to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate of interest established each year by the board of directors of the association, but not less than twelve percent (12%) per annum and the association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both and there shall be added to the amount of such assessment, interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action and any expenses related to the collection of the assessment. The procedure for foreclosing such lien shall be the same as by law provided for the foreclosure of mortgages. No owner may waive or otherwise escape liability for the assessments provided herein by the nonuse of the common areas or abandonment of his lot.

Section 10. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Any mortgagee taking title to and the right of possession of a unit by foreclosure or by assignment or deed in lieu of foreclosure, or any purchaser at a foreclosure sale shall take said unit free and clear of any claim for unpaid assessments and charges accruing prior to the time such mortgagee takes title to the unit, except that said unit shall be subject to the lien of assessment resulting from the pro-rata reallocation of such unpaid charges and

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ARTICLE V  
GENERAL PROVISIONS

Section 1. Enforcement. The association or its successor and any individual lotowner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or its successor, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability in validation of any one of these covenants or restrictions by Judgment or Court Order shall in no manner effect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of two (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by no less than ninety percent (90%) of the lotowners and thereafter by an instrument signed by no less than seventy-five percent (75%) of the lotowners. Any amendment must be recorded, provided however, that the Declarant may amend the terms, covenants and restrictions of this Declaration at any time during the first ten (10) years from the date hereof with the consent of the association. Any other provision of this section to the contrary, notwithstanding, the Declarant shall not be entitled to amend this Declaration after such time as the Declarant no longer holds any interest in the properties covered hereunder or in any properties adjacent or contiguous thereto.

Section 4. Annexation of additional property.

A. Additional land adjacent to the properties and owned or controlled by the Declarant may be annexed by the Declarant at any time within ten (10) years from the date of recording of this instrument. Said annexation shall be effective upon the Declarant recording an instrument referring to this Declaration describing the property to be annexed and submitting said property to the provisions of this Declaration. Adjacent land includes land separated from the properties by a street, road,

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the meeting and one hundred percent (100%) of all class B members.

The presence of members or proxies entitled to cast sixty percent (60%) of the votes of each class shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum of the preceding meeting. No such subsequent meeting shall be more than sixty (60) days following the preceding meeting. Class A members not present may give their written consent to the action taken thereat.

#### ARTICLE VI

##### DECLARANT'S RIGHTS

Section 1. Use of property. Declarant reserves the right to grant easements for utilities and other reasonable purposes across the common area and to sell, assign or conduct other business in connection with the development of the project from any of such lots prior to their being sold. This reservation of right or privilege in the Declarant includes, but is not limited to the right to maintain models, erect signs, maintain an office, staff the office with employees and to use any and all of the common areas, and to show lots then unsold. Any improvements placed on the properties for the purpose of such sales, such as signs, telephones or other promotional items, shall not be considered a part of the common area nor attachments thereto, but shall remain the property of the Declarant. When Declarant no longer owns any lot and no longer has the right to annex adjacent land, whichever shall occur later, the rights of Declarant under this Declaration shall thereupon terminate.

Section 2. Declarant's easement for adjoining property. Certain other properties may be annexed to the properties as provided in Article V, Section 4, hereof. Declarant reserves unto itself, its successors and assigns, a nonexclusive easement over the roadways of the property in order to provide access through the properties to and from such adjoining property. Declarant further reserves the right to connect to, extend and utilize the utilities that will be located on the property. Declarant further reserves the right to permit future owners of all or any portion of such adjoining property to use the recreational facilities of the common area provided that such persons pay a pro rata share of the

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as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant, may be reasonably required or be convenient or incidental to the improvement and sale of the lots, including, but without limitation, storage areas, parking lots, signs, sales offices and business offices.

Section 4. Conveyance of the common areas. The Declarant shall convey the common areas to the Association at such time as the Declarant no longer owns any lot or any adjacent land subject to annexation under Section 2.

Section 5. In order to maintain property values within the properties, Declarant and any adjacent lotowner shall have the right of first refusal prior to the sale of any lot. Any lotowner desiring to sell a lot shall, upon obtaining a bonafide offer to purchase, and prior to accepting the same, offer for sale to the Declarant and any adjacent lotowner such lot upon the same terms and conditions as are contained in such offer to purchase. The rights reserved hereunder shall terminate upon the sale by Declarant of fifty percent (50%) of the lots within the properties or July 1, 1986, whichever event shall occur later.

Section 6. Escrow for completion of roads, sewers, water lines, and other amenities. Declarant shall, from the sale of each lot, deposit in an escrow account, an amount equal to Ten Percent percent (10%) of the gross proceeds of the sale of each lot in Foxcliff Estates South, or One Thousand Dollars, (\$1000.00), whichever is less, to be held and used for the completion of roadways, water and sewer lines, and amenities. Said fund shall be held by an escrow agent and may be paid to or on behalf of the Declarant to defray the cost of installation of roadways, sewer and water lines and the completion of amenities within the properties.

Such funds shall be held and administered in accordance with the following terms and conditions:

The Developer shall cause to be prepared, specifications of the work to be done in connection with the construction of roadways and installation of sewer lines and water lines in Foxcliff Estates South. Such specifications shall be prepared by a registered engineer and Developer shall obtain bids thereon from at least two (2) qualified contractors. All payments from the fund established shall be made by the Trustee upon presentation of an engineer's certificate of work completed and materials furnished in accordance with said contract, approved in writing by Developer, together with an Affidavit of the contractor that all subcontractors



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## EXHIBIT "A"

## LEGAL DESCRIPTION

A part of the Southwest quarter of Section 14 and a part of the Northwest quarter of the Northwest quarter of Section 23, all in Township 12 North, Range 1 East, lying in Washington Township, Morgan County, Indiana and described as follows:

Beginning at a stone found at the Southwest corner of the Southwest quarter of said Section 14; thence North 00°-40'-29" West (an assumed bearing) along the West line of said quarter 1566.98 feet to an iron pin set on the centerline of an Indianapolis Power and Light Co. powerline easement; thence North 87°-54'-19" East along said centerline 1618.02 feet to an iron pin set; thence leaving said centerline South 02°-05'-41" East a distance of 245.91 feet to an iron pin set; thence South 44°-26'-50" West a distance of 410.00 feet to an iron pin set; thence South 71°-35'-26" West a distance of 264.18 feet to an iron pin set; thence South 62°-07'-35" West a distance of 464.48 feet to an iron pin set; thence South 00°-00'-00" West a distance of 127.29 feet to an iron pin set; thence South 58°-54'-10" West a distance of 350.41 feet to an iron pin set; thence South 00°-40'-20" East a distance of 235.00 feet to an iron pin set in the center of a creek; thence following the meanderings of said creek to an iron pin set which bears North 68°-34'-02" East a distance of 1160.49 feet from last said point; thence South 31°-05'-15" East a distance of 79.40 feet to an iron pin set; thence following the shoreline of a proposed lake to an iron pin set which bears South 30°-20'-23" West a distance of 980.40 feet from last said point; thence South 89°-19'-40" West a distance of 265.00 feet to an iron pin set on the West right of way line of a public highway; thence North 00°-40'-20" West along said right of way 200.00 feet to an iron pin set at the P.C. of a curve to the left; thence along said right of way curve having a radius of 25.00 feet, an arc distance of 39.27 feet, to an iron pin set at the P.T. of said curve said pin bearing North 45°-40'-20" West a distance of 35.36 feet from said P.C.; thence South 89°-19'-40" West along said right of way 435.00 feet to an iron pin at the P.C. of a curve to the right; thence along said right of way curve having a radius of 375.00 feet, an arc distance of 70.38 feet, to an iron pin set at the point of reverse curve of a curve to the left, said pin bearing North 85°-17'-45" West a distance of 70.27 feet from the P.C.; thence along said right of way curve to the left having a radius of 25.00 feet, an arc distance of 31.38 feet, to an iron pin set at the point of reverse curve of a curve to the right, said pin bearing South 64°-07'-36" West a distance of 29.36 feet from the last said point; thence along said right of way curve to the right having a radius of 375.00 feet, an arc distance of 77.67 feet to an iron pin set, said pin bearing South 34°-06'-21" West a distance of 77.53 feet from the last said point; thence leaving said right of way North 49°-57'-38" West a distance of 157.22 feet to the point of beginning, containing 39.02 acres, more or less in Section 14, and 3.2 acres, more or less in Section 23, and subject to all legal rights of way and easements.

