

MORGAN COUNTY RECORDER  
PAMELA KIVETT 29P  
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**AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS  
OF FOXCLIFF ESTATES SUBDIVISION**

This Amended Declaration is made this 10<sup>th</sup> day of December 2009, by the affirmation signature of three-fourths of the members casting a vote on the issue, so long as the number of members voting constitutes at least 25% of the total Class A & B membership of Foxcliff Estates Subdivision;  
WITNESSETH:

WHEREAS, the following facts are true:

- A. On August 21, 1968 Summit City Development Corporation, as original Declarant, recorded certain restrictions for Foxcliff Estates Subdivision at Deed Record 207, Page 503, which restrictions reserved in Summit City Development Corporation the right to amend the restrictions of Foxcliff Estates Subdivision for a period of five (5) years from the recording thereof.
- B. On May 23, 1969, Summit City Development Corporation recorded certain amendments to the restrictions of Foxcliff Estates Subdivision at Deed Record 211, Page 140.
- C. On October 17, 1969, Summit City Development Corporation recorded certain additional amendments to the restrictions of Foxcliff Estates Subdivision at Deed Record 211, Page 251.
- D. On August 17, 1973, Summit City Development Corporation recorded certain additional amendments to the restrictions of Foxcliff Estates Subdivision at Deed Record 234, Page 537.
- E. On August 7, 1978, Foxcliff, Inc. as declarant and as successor to Summit City Development Corporation recorded a Declaration of Amended Covenants and Restrictions of Foxcliff Estates Subdivision at Deed Record 264, Page 182.
- F. On July 31, 1980, Foxcliff Estates Community Association recorded a Declaration of Amended Covenants and Restrictions of Foxcliff Estates Subdivision at Deed Record 275, Page 309.
- G. On December 26, 1995, two amendments were made to the Declaration of Amended Covenants and Restrictions of Foxcliff Estates Subdivision.
- H. On December 29, 2004, Foxcliff Estates Community Association recorded a Declaration of Amended Covenants and Restrictions of Foxcliff Estates Subdivision at Deed Record I 200418703.
- I. The restrictions of the covenants and restrictions are incorporated by reference in the plats of the following sections of Foxcliff Estates Subdivision:

- Section I Recorded in Deed Record 207, Page 503
- Section II Recorded in Deed Record 209, Page 164
- Section III Recorded in Deed Record 213, Page 86
- Section IV Recorded in Deed Record 207, Page 510
- Section V Recorded in Deed Record 209, Page 167
- Section VI Recorded in Deed Record 212, Page 268
- Section VII Recorded in Deed Record 210, Page 24
- Section IX Recorded in Deed Record 210, Page 593
- Section X Recorded in Deed Record 226, Page 554
- Section XI Recorded in Deed Record 213, Page 88
- Section XII Recorded in Deed Record 229, Page 286
- Section XIII Recorded in Deed Record 233, Page 307
- Section XIV Recorded in Deed Record 213, Page 535
- Section XV Recorded in Deed Record 220, Page 407
- Section XVI Recorded in Deed Record 220, Page 406



Section XVII	Recorded in Deed Record 238, Page 324
Section XVIII	Recorded in Deed Record 276, Page 33
Section XIX	Recorded in Deed Record 226, Page 555
Section XX	Recorded in Deed Record 224, Page 136
Section XXI	Recorded in Deed Record 360, Page 586

J. The owners of lots in the Foxcliff Estates Subdivision desire to provide for the preservation and enhancement of the property values, amenities and opportunities in the Foxcliff Estates Community and for the maintenance of the tract and the improvements thereon, and to replace all prior amendments, and to this end desire to subject, together with such additions as may hereafter be made thereto (as provided in Paragraph 3 hereof), To the amended restrictions, covenants, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit and complement of the lots and lands in the tract and the present and future owners thereof.

K. Foxcliff Estates Community Association, Inc., an Indiana not-for-profit corporation has been formed for the primary purposes to own, construct, manage, maintain, preserve, repair and reconstruct the Common Area, provide architectural control of the Lots in the Foxcliff Estates Subdivision, promote of other non-profitable purposes which are permitted by the Act and permitted to be carried on by an organization exempt from Federal taxation under the provisions of Section 501 © (4) of the Internal Revenue code of 1954 (hereinafter referred to as the "Code"), exercise all of the power and privilege and to perform all of the duties and obligations of the Corporation as set forth in the Amended Declaration and all Supplementary Declarations as the same may be amended from time to time.

L. Foxcliff Estates Community Association, Inc., and Indiana not-for-profit corporation, has been delegated and assigned, by the Articles of Incorporation, powers that include, but are not limited to, owning, maintaining, and administering the Common Area, administering and enforcing the recreation, health, safety, and welfare of the Owners and occupants of the Foxcliff Residential Community. FECA has accepted such powers with respect to the tract including lots, common areas, and associated facilities subjected to these Covenants and Restrictions by the existing recorded plats referenced herein.

NOW THEREFORE, it is agreed by the affirmative signature of three-fourths of the members casting a vote, so long as the number of members voting constitutes at least 75% of the total Class A & B membership, in good standing, hereby amend the existing covenants and restrictions and declare that all of the lots and land in the tract and such additions thereto as may hereafter be made pursuant to Article III hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are and shall be, subject to the Articles of Incorporation, the Bylaws, the Register of Regulations, other documents and referenced within these documents, and this Amended Declaration, all of which is declared and agreed to be in furtherance of a plan for the improvement and sale of lots and lands in the tract and is established for and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the tract as a whole and of each of said lots and lands situated therein. All of the above referenced documents, covenants and restrictions shall run with the land and shall be binding upon any parties having or acquiring any right, title or interest, legal or equitable, in and to the tract or any part of parts thereof subject to such documents, covenants and restrictions, and shall inure to the benefit of the existing owners and every one of their successors in title to the tract or any part or parts thereof. This Declaration shall amend, replace and take precedence over any prior covenants and restrictions or amendments thereof.

#### I. Definitions

The terms set forth below when used in this Amended Declaration and/or the Bylaws, unless the context clearly requires otherwise, shall mean the following.

a. "Articles" means the Articles of Incorporation, as amended from time to time.

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- b. "Assessments" means and includes all sums lawfully assessed against the members of the Corporation as set forth by this Amended Declaration, and Supplementary Declaration, the Articles or the Bylaws.
- c. "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Articles and the Bylaws.
- d. "Building Control Committee" means the entity established pursuant to Article VII of the Amended Declaration for the purpose stated therein.
- e. "Bylaws" means the Code of Bylaws of the Corporation, as amended from time to time.
- f. "Common Area" means those areas of land and lakes (1) shown on any recorded subdivision plat, (2) described in any recorded instrument, or (3) conveyed to or acquired by the Foxcliff Community Association, together with all improvements thereto, which are intended to be devoted or dedicated to the common use and enjoyment of all the members; and any drainage facilities which are located on, over, across or through one or more parcels. (i.e. pool, roads, tennis courts, boat launches, dams, other common areas and facilities).
- g. "Community Sewer System" means the sewage collection and treatment system operated by Mapletum Utilities; its successors or assigns upon the Tract as the same may exist or be extended from time to time.
- h. "Community Water System" means the water treatment and distribution system operated by Mapletum Utilities, its successors or assigns as the same may exist or be extended from time to time.
- i. "Corporation" means the Foxcliff Estates Community Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.
- j. "Declaration" means the original restrictions for Foxcliff Estates Subdivision recorded at Deed Record 207, Page 503, the May 23, 1969 Amendments recorded at Deed Record 211, Page 140, the October 17, 1969 Amendments recorded at Deed Record 213, Page 251, and the August 17, 1973 Amendments to the restrictions recorded at Deed Record 234, Page 537, and the August 7, 1978 Amendments recorded at Deed Record 264, page 182 and the July 31, 1980 Amended Declaration recorded at Deed Record 275, Page 309, and the December 26, 1995 Amendments recorded at Deed Record 383, Page 48 in the Office of the Recorder of Morgan County, Indiana.
- k. "Development Area" means the real estate described in Exhibit "A" attached hereto and made a part hereof.
- l. "Foxcliff Estates Subdivision" means the name by which the Tract is known.
- m. "Fence" means a barrier, man-made or natural, used for dividing or separating property, or for screening, or for restraining pets or children.
- n. "General Plan of Development" means that plan as publicly distributed and as approved by appropriate public agencies, including local planning and zoning authorities and governing bodies.
- o. "Improved Lot" means any lot upon which construction of a living unit or any appurtenant structure thereto has commenced.
- p. "Living Unit" means any portion of a structure situated upon the Tract designed and intended for use and occupancy by a single family.
- q. "Lot" means any plot of land shown on any recorded subdivision plat with the exception of Common Area.
- r. "Member in good standing" means a Class A, Class B or Class C member of the Corporation who has paid in full all assessments, fees, and /or other funds due.
- s. "Members" means Class A, Class B and Class C members of the Corporation, all as designated in the Articles.
- t. "Nuisance" shall mean that which annoys, disturbs or needlessly harms another person or person's property. Nuisances include anything which is dangerous to life or health, indecent or offensive to the senses, interferes with the quiet enjoyment of the community, violates a reasonable person's standards of decency or the standards of decency established within the Covenants, Articles of Incorporation, Bylaws, and /or Register of Regulations of this Corporation. It may include anything that is perceived to significantly decrease property values of neighbor(s) and/or the community.

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- u. "Owner" means a person, including Declarant, who at any time has or is acquiring any right, title or interest, legal or equitable, in or to a lot, including contract sellers, but excluding a person having such an interest merely as security for the performance of an obligation.
  - v. "Parcel" means all platted subdivisions as defined in the Indiana Horizontal Property Act, Indiana Code 32-1-6-1, et seq. as the same may be hereinafter amended, consisting of one or more lots which are subject to the same Supplementary Declaration.
  - w. "Part of Development Area" means any part of the development area that is not included in the Tract as the same may exist from time to time.
  - x. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.
  - y. "Recreational Area" means the real estate designated as such on the General Plan of Development Schematic Drawings and any recreational facilities that are built thereon which became Common Area and the property of the Corporation upon its conveyance to the Corporation by the Developer.
  - z. "Restriction" means the covenants, conditions, easements, charges, liens, and restrictions and all other provisions set forth in this Amended Declaration, as the same may from time to time be amended.
  - aa. "Register of Regulations," means the document containing rules, regulations, policies and procedures adopted by the Board of Directors, as the same may from time to time be amended. It shall also include the Building Control Rules and Procedures approved by the Building Control Committee and the Board of Directors.
  - bb. "Supplementary Declaration" means any declaration of covenants, conditions, or restrictions which may be recorded and which extends the provisions of this Amended Declaration to a parcel and contains such complementary provisions for such parcel as are required by this Amended Declaration.
  - cc. "Tract" means the real estate described in Exhibit "B" to this Amended Declaration together with such other real estate as may from time to time be added thereto under the provisions of Paragraph 3 hereof.
  - dd. "Unimproved Lot" means any lot that is not an improved lot.
  - ee. "Unbuildable Lot" means any Lot which the Building Control Committee has deemed (and the Board has approved by a 2/3 vote) unbuildable for one, or more, of the following reasons:
    - 1. Severe topography precluding a reasonable building site according to current construction technology.
    - 2. Lack of convenient accessibility via a passable road.
    - 3. Lack of reasonable availability of utilities.
    - 4. Undue danger of damage to adjacent properties.
    - 5. Underground utilities crossing the property.
  - ff. "Vehicles" as used herein shall include, but not be limited to automobiles, trucks, motor homes, all-terrain vehicles, motorcycles, minibikes, motor scooters, go-carts, golf carts, campers, buses, vans, and/or other means of motorized transport.
- CHICAGO TITLE** ®
- II. Members' Agreement to the Covenants and Amendments.
- A. Pursuant to the power of amendment provided in the original Declaration, the lot owners of Subdivision by the affirmative signature of three fourths of the members in good standing, casting a vote on the issue, so long as the number of members voting constitutes at least 25% of the total Class A & B membership hereby declare that the tract and any additions thereto pursuant to Article III hereof shall be held, transferred, sold, conveyed and occupied subject to this Amendment. The owners of any lot subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from any present owner of such lot, their successors or assigns, or (ii) by the act of occupancy of a lot, shall accept such deed, execute such contract or occupy such lot subject

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to each and every restriction and agreement herein contained. By acceptance of such deed, execution of such contract, or the act of occupancy the owner acknowledges the right and powers of the Corporation with respect to these Covenants and Restrictions, the Articles of Incorporation, Bylaws, and Register of Regulations, and also for themselves, their heirs, personal representatives, successors, and assigns, and such owners' covenant, agree and consent to and with the Corporation and to and with the present owners and subsequent owners of each of the lots affected by these Covenants and Restrictions to keep, observe, comply with and perform such owner covenants, restrictions and agreements.

B. By the execution of this Amended Declaration, the owners and Foxcliff Estates Community Association, Inc. agree and consent with each other to keep, observe, comply with and perform each and every covenant, restriction and agreement herein contained.

III. Additions to the Tract. Additional real estate shall become subject to the Covenants and Restrictions in the following manner:

A. Within the Development Area.

The Association or any other owner of real estate within the Development Area may bring within the scheme of this Amended Declaration and add to the Tract, an additional parcel or parcels of real estate that is a part of the Development Area. Such consent and acceptance shall be given by a two-thirds vote of the Board of Directors of the Corporation, and shall not be unreasonably withheld, provided that the proposal meets the following standards:

1. The proposal complies with the general use and restrictions shown on the General Plan of Development.
2. The proposal has the prior approval, as required, of the Morgan County Plan Commission and the other appropriate governmental agencies.
3. The documents, including the Supplementary Declaration of Covenants and Restrictions for such Parcel, are compatible with this Amended Declaration and subjects the parcel to the provisions of this Amended Declaration and the Corporation's documents including the Articles of Incorporation, Bylaws, and the Register of Regulations including the Building Control Rules and Procedures.
4. Adequate provisions have been made by the owners of the parcel(s) to be added to fund and guarantee the completion, within one year from the date of the acceptance of the parcel by the Corporation, of the improvement of the parcel with roadways; sewers; water, gas and electric services; and proper surface drainage, all to the same standards as may be established from time to time within the Tract.

B. Other Real Estate

1. Notwithstanding the foregoing, additional real estate may be brought within the scheme of this Amended Declaration and added to the Tract with the written consent of the Corporation acting through its Board of Directors upon the authorization of twenty-five percent (25%) of all class A and B members.
2. The additions shall become effective upon the filing of record of one or more approved Supplementary Declarations and plats with respect to the additional real estate.

IV. Foxcliff Estates Community Association, Inc.

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The Corporation established as Foxcliff Estates Community Association was established in 1969 by Certificate of Incorporation with the provisions of a 1935 "An Act" concerning corporations of not for profit. Amended Articles of Incorporation supersede previous Articles of Incorporation and are in accordance with the "Indiana Not-for-Profit Corporation Act of 1971" and all acts amendatory and supplementary thereto.

- A. Purpose and Powers. The Corporation shall have such "purpose and powers" as are set forth in this Amended Declaration and in the Articles as each may be amended from time to time, together with all other powers that belong to it by operation of law.
- B. Membership. Each owner or occupant shall automatically be a Member of the Corporation. Members may enjoy the privileges and shall be bound by the obligations contained in the Articles Incorporation, Bylaws, Register of Regulations, the Covenants and Restrictions, and other related documents.

- C. Any mortgagee or other lien holder who becomes an owner of real estate which is subject to this Amended Declaration and which is security for his mortgage or lien shall upon becoming an owner be subject to all the requirements and limitations imposed by this Amended Declaration, including those provisions with respect to the payment of assessments.

- D. Classes of Members. The Corporation shall have three (3) classes of members as follows:

- Class A. Every person who is an owner of an improved lot shall be a Class A member.
- Class B. Every person who is an owner of an unimproved or unbuildable lot shall be a Class B member.
- Class C. Every person who is an occupant but not an owner shall be a Class C member

- E. Voting and Other Rights and Privileges of Members. The voting and other rights of eligible Class A and Class B members shall be as specified in the Articles and Bylaws. Class A and B members who have not paid all assessments on all lots owned by that member and Class C members are not eligible to vote.

- F. Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its Articles of Incorporation, by operation of law, be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may be transferred to this Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Amended Declaration within the Tract as hereinafter provided.

CHICAGO TITLE

#### V. Assessments

- A. Creation of the Lien and Personal Obligation of Assessments.

- 1. Each Owner, and each subsequent Owner of any lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following:
  - a. General Assessments
  - b. Special Assessments

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c. Additional Special Assessments

2. All assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Lot against which each assessment is made until paid in full. Each Assessment together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the owner of the lot at the time when the assessment became due and payable. Details of these assessments are described in the Bylaws.

B. Description of Specific Assessments.

1. General Assessment

- a. Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of the owners and occupants in the Foxcliff Estates Subdivision and in particular for the improvement, maintenance and repair of the common areas and its associated facilities, and operation of the Corporation. The General Assessment shall meet the annual budget obligations of the Corporation.
- b. Method of Assessment.
  1. Improved lots. Each improved lot shall be assessed at a uniform rate set at the discretion of the board of Directors.
  2. Unimproved lots. Each unimproved lot shall be assessed at a uniform rate that may be equal to, or less than the rate for improved lots set at the discretion of the Board of Directors.
  3. Unbuildable Lots. Each unbuildable lot shall be assessed at a uniform rate that may be equal to, or less than the rate for unimproved lots set at the discretion of the Board of Directors.
- c. The Board of Directors may in any fiscal year increase/decrease the General Assessment by an amount not in excess of fifteen percent (15%) of the amount of General Assessment then in effect. The modified General Assessment shall be effective the first day of the next assessment year.

d. Basis of Assessments.

By a vote of two-thirds (2/3) of the Directors, the Board of Directors shall fix the General Assessment for each assessment year of the Corporation. The assessments shall be based on the following:

1. The proposed budgeted income and expenses that shall be sufficient to meet the obligations.
2. The number of lots in each classification, and
3. An amount not in excess of the current maximum permitted by subparagraph (Y. part B, 1,c).

2. Special Assessment

- a. The Corporation may levy a Special Assessment applicable to that year and not more than the next three succeeding fiscal years for the purpose of defraying, in whole or in part the cost of any purchase, construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal

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property relating thereto, provided that any such Special Assessment shall have the approval of a majority of the Class A and Class B members who are voting in person or by proxy at a special meeting of such members duly called for this purpose.

b. Method of Assessment - The method of assessment shall be the same as specified in Section V, Part B, item 1. Paragraph b.

3. Additional Special Assessment.

The Board of Directors of the Corporation may levy an Additional Special Assessment upon any lot for the purpose of recovering the cost of damage or repairs to the Common Area caused in whole or in part by the owner of such lot or by any of his/her guests, tenants, licensees, agents or members of his/her family.

C. Payment of All Categories of Assessments.

The Board of Directors shall establish the manner in which assessments are to be paid and date(s) assessments are due.

D. Effect of Nonpayment of Assessment – Remedies of the Corporation.

1. Any Assessment not paid within thirty (30) days after the due date shall be considered delinquent and may upon resolution of the Board bear interest from the due date at a percentage rate, no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year.
2. Class A and B members who have assessments that are delinquent and Class C members who rent or lease a residence that has assessments that are delinquent shall forfeit all privileges and/or rights to use common areas and facilities until the assessments are paid in full on all lots owned by the member. In the case of a member owning more than one lot, the same forfeit shall apply until the assessments on all lots are paid in full.
3. The Corporation shall be entitled to institute in any court of competent jurisdiction such procedure, at law or in equity, by foreclosure or otherwise to collect the delinquent assessment plus any expenses or costs, including interest and attorneys' fees, incurred by the Corporation in collecting the same. If the Corporation has provided for the collection of any assessment in installments, upon default in any payment, the Corporation may declare the entire balance of said Assessment due and payable in full. In the event any action to foreclose the lien of the Association is brought, the procedure for foreclosure of such lien shall be the same as provided for in the law of the State of Indiana for the foreclosures of mortgage liens.
4. No owner(s) may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of lot(s).

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5. The Board of Directors of the Corporation may accept title for the Corporation to any lot, free and clear of any other liens or encumbrances, as payment in full for the outstanding balance of assessments provided for herein and levied against that lot.

E. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein against a lot shall be subordinate to the lien of any recorded first mortgage which is recorded following the date of recording hereof covering such lot and which is for the construction or purchase of a residence thereon and to any valid tax or special assessment lien on such lot in favor of any governmental taxing or assessing authority. No sale or transfer of such lot(s) shall relieve any lot from liability for any assessments thereafter becoming due or from the lien thereof.

F. Exempt Property.

1. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:
  - a. All properties to the extent of any easement or other interest therein dedicated and accepted by the public authority and devoted to public use;
  - b. The Common Area;
  - c. All properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.
2. Notwithstanding any other provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

VI. Annual Budget

A. The Board of Directors shall prepare a proposed annual budget for the subsequent fiscal year not later than sixty (60) days prior to the close of the fiscal year. The annual budget shall provide for the budgeting and allocation of expenses in such a manner that the obligations imposed by the Amended Declaration and all Supplementary Declaration will be met.

B. Adopting the Budget.

The Bylaws shall provide the procedure for membership review and comment of budget. The Board of Directors shall adopt, by a 2/3 affirmative vote, the budget for the upcoming year, not later than 15 days prior to the close of the current year. In addition, the Bylaws shall provide the procedure for approval of the annual budget.

VII. Building Control.

A. The Building Control Committee

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1. A Building Control Committee consisting of three (3) or more persons as provided in the Bylaws shall be appointed by the Board of Directors.
2. The Building Control Committee shall regulate the external design, appearance, use, locations and maintenance of the tract and 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.

**B. Conditions**

1. No improvements, alterations, repairs, excavations, changes in grade, or other work that in any way alters any lot from its natural or improved state shall be made or done without the prior written approval of the Building Control Committee, except as otherwise expressly provided in this Amended Declaration.
2. No building, sign, fence, wall, residence, other structure, and/or other improvement/modification to the lot shall be commenced, erected, retained, improved, repaired, altered, made or done without the prior written approval of the Building Control Committee.
3. Omission of rules, regulations, and/or guidelines for specific situations shall not constitute approval of specific situations. As times change and new issues arise, the Association reserves the right to modify rules, regulations, guidelines, and other applicable documents to fulfill the intent of the Articles of Incorporation, the Covenants, and other documents. In addition, the Association shall have no financial responsibility for work that is performed on a lot(s).

**C. Development Bond.**

1. No improvements, alterations, repairs, excavations, changes in grade or other work upon a lot may be commenced until and unless the owner of such lot shall have first provided a bond to the Corporation as required by the Building Control Rules and Procedures. This is to insure that such work will be completed in compliance with the restrictions contained in this Amended Declaration and the guidelines of the Building Control Committee and to protect the Corporation from any damages to the common areas or adjacent properties caused in whole or in part by such work.
2. The amount of assessments incurred for violation during a project may exceed the amount of the required bond.
3. The method of administration and amount of "Development Bond" will be included as part of the Building Control Rules and Procedures.

**D. Procedures.**

1. Procedures for Building Control shall be included in a document that shall be incorporated into the Building Control Rules and Procedures.
2. A decisions of the Building Control Committee may be appealed to the Board of Directors and can be reversed or modified by a two-thirds (2/3) vote of the Directors.

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VIII. Common Areas.

A. Ownership.

The common areas shall remain private and owned by the Corporation. The common areas are intended to be, or shall be construed as, dedicated to the members of the FECA; provided, that the Corporation may dedicate or transfer all or any part of its interest in the common area to any public agency, authority, or utility for use as roads, utilities, parks or other public purposes.

B. Transfer of Ownership.

The right of the Corporation to dedicate or transfer all or any part of the common area(s) to any public agency, authority, or utility for such purposes is subject to such conditions as may be agreed to by the owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Class A and Class B members agreeing to such dedication or transfer, has been recorded.

C. Sale of Common Areas.

The Corporation may sell its interest in the common areas, except for roads and lakes, provided any such sale shall not be effective unless an instrument signed by two-thirds (2/3) of the Class A and Class B members agreeing to such transfer, has been recorded.

D. Obligations to the Corporation.

The Corporation shall be responsible for the exclusive management and control of the common areas and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. However, it shall not be the obligation of FECA to maintain and keep free of leaves, sticks, limbs and other debris in the area along the lakeshore and in the water in the immediate vicinity of privately owned lots. ®

E. Members' Easement of Enjoyment.

Subject to the provisions herein, every member shall have the right and easement of enjoyment in and to the common area, which right and easement shall be appurtenant to and shall pass with the title to every lot.

F. Extent to Which Members' Easements is Subject.

1. The right of the Corporation to establish rules.
2. The right of the Corporation to charge admission and other fees for the use of the Common Areas or the Recreation Areas.

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3. The right of the Corporation to suspend member's use of the common areas, including the Manor House and recreational facilities but excluding roads for any period during which any all assessments against each and all lots owned by the member remain unpaid for more than thirty (30) days after due date.
4. The right of the Corporation to suspend a member's use of common areas including the Manor House and recreational facilities but excluding roads for any infraction of this Amended Declaration, the Register of Regulations and/or any other applicable document.
5. The right of the Corporation to mortgage any or all of the common area or the facilities thereon for the purposes of improvement to, or repair of, the common area or structures constructed thereon, pursuant to the approval of a majority of the Class A and Class B members voting in person or by proxy at a regular or special meeting of the Corporation duly called for this purpose.

G. Delegation of Use.

Any member may delegate his right of enjoyment to the common area and facilities to the members of his family and to his guests. All shall be subject to such rules and regulations as may be established from time to time by the Corporation and included within the Register of Regulations.

H. Damage or Destruction by Owner.

1. In the event the common area is damaged or destroyed by an owner or any of his guests, tenants, lessees, licensees, agents or member of his family, such owner does hereby authorize the Corporation to repair said damaged area.
2. The Corporation shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation.
3. The amount necessary for such repairs shall become an additional special assessment upon the lot of said owner.

I. Use of Tract.

- A. The primary purposes of the Corporation/Association include, but are not limited to manage, maintain, and preserve, the Common Area, to provide architectural control of the Lots in the Foxcliff Estates Subdivision and to exercise all of the power and privilege and to perform all of the duties and obligations of the Corporation as set forth in the Amended Declaration and all Supplementary Declarations as the same may be amended from time to time.
- B. The Articles of Incorporation provide the Corporation/Association with specific powers. One specific power includes the power to promulgate such rules and regulations and perform such deeds as are deemed necessary to achieve the aforesaid purpose. That power is not diminished nor restricted due to subjects that may or may not be included in the Covenants.

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C. The Register of Regulations shall include Rules, Regulations, Policies, and Procedures and Building Control Rules and Procedures and other procedural documents. Items not included in the Covenants may be included in the Register of Regulations as long as such rules, regulations, and/or procedures are consistent with the governing documents.

D. The Rules, Regulations, Policies, and Procedures shall include but not be limited to the following:

1. Common Areas and Facilities (areas include but are not limited to):
  - a. Cemetery.  
The Association will have the right to adopt rules and regulations to control the use of the cemetery. This shall include, but not be limited to landscaping, maintenance of grounds, maintenance of head stones, and burial permission and head stones types
  - b. Dams.  
The Association shall be responsible for maintaining the dams. Parking on dams is prohibited.
  - c. Lakes.  
Foxcliff Estates Community Association, its successors and assigns shall own the waters of the lakes and the lands normally flowed and covered by such lakes at their highest level. Members shall not have any riparian rights in and to said water or the land below said waters.
    1. The Association shall have the right to adopt rules and regulations to control the use of lakes, streams or other bodies of water that are a part of Foxcliff Estates Subdivision.
    2. Use of the lakes (including the island), streams and other bodies of water shall be limited to recreational activities that include swimming, fishing, boating and ice-skating.
    3. Furthermore, the Association shall have the right to control of the types of boats that may be permitted on said lakes, and the right to require and charge reasonable fees for permits for the operation of any boat on said lakes. (R)
    4. A fallen tree that interferes with water access or the natural flow of water or impinges upon another's property must be removed at owner's expense. FECA may request a tree to be removed for other reasons. Limbs and branches falling onto the lake are the responsibility of the lot owner to remove.
    5. In the interest of health, sanitation and the protection of the waters' use for recreation and wildlife, the lakes are not to be used for any purpose that results in the pollution of the lakes and/or any waterway that flows into or adjacent to said property. This includes but is not limited to refuse, sewage and/or other materials that might tend to pollute the water of any such lakes or otherwise impair the ecological balance of the surrounding lands thereto.
    6. No gasoline motors are permitted on the lake. Only electric motors may be used.

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d. Manor House (includes surroundings).

The Manor House and its surroundings are dedicated to the private use of the members in good standing. The Association shall have the right to establish rules and regulations to govern the use of this facility and shall be responsible for its maintenance.

e. Recreation Facilities.

The recreational facilities include the park, pool, tennis courts and the associated surroundings. These facilities are dedicated to the private use of the members in good standing. The Association shall have the right to establish rules and regulations to govern the use of these facilities and shall be responsible for the maintenance of the facilities.

f. Roads.

The roadways of Foxcliff Estates Subdivision have been dedicated to the private use of the owners of lots in Foxcliff Estates Subdivision. The Association shall have the right to establish rules and regulations to govern the use of said roads, including but not limited to parking, traffic, vehicles, and right to grant license to use said roads to other types of traffic. There is hereby granted a license for use of said roadways to emergency vehicles including fire and police, to public school busses, delivery vehicles, and to postal service for the delivery of mail.

g. Signs.

The Association shall have the right to establish rules and regulations to govern the use of signs in Foxcliff Estates Subdivision. This includes, but is not limited to: size, location (on lots, on mailboxes, at entrances, etc.), number and type (contractor, real estate, garage sales, open houses, receptions, addresses, etc.). Signs identifying a business are prohibited. For contractor signs, see the Register of Regulations. (R)

2. Private Property Use and Restrictions.

a. Animals.

1. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot.
2. Common and normally accepted domesticated household pets such as dogs and cats may be kept. In accordance with the State of Indiana leash law, all pet owners are required to keep their animals within the confines of their property, unless personally attended and controlled on a leash, so as not to wander onto personal property of others and/or cause a nuisance.

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3. The number of animals shall be limited to a number that the owner can maintain without causing a nuisance.
- b. Burning (Leaf and Open Burning).
  1. Open burning (including but not limited to leaves and trees) shall be no less lenient than the Indiana State law, but it may be more restrictive. The fire must be under continuous supervision of the homeowner.
  2. Contractors are not allowed to burn materials at any time. Waste materials resulting from construction must be removed from Foxcliff Estates Subdivision.
- c. Firearms, Hunting, Trapping & Use of Poisons.
  1. There is to be no discharge of any type of weapons within the boundaries of Foxcliff.
  2. Firearms may be used to control wildlife on the lakes, but only those persons authorized by the Board for the specific activity may participate.
  3. Hunting is not permitted within the boundaries of Foxcliff Estates Subdivision.
  4. Trapping requires written permission from the Board.
  5. Poisoning of wildlife, specifically raccoons, opossums, squirrels, chipmunks, coyotes, foxes, and birds is prohibited.
- d. Nuisances.

No Nuisance shall be permitted to exist, operate, or be carried on upon any Lot. Nor shall anything be done thereon which may be or may become an annoyance, nuisance, and/or interference with the quiet enjoyment of the neighborhood or to any lot owner(s) in Foxcliff Subdivision. Nor shall anything be done so as to be detrimental to any other Lot in the vicinity thereof or its occupants and/or detrimental to the community in general.
- e. Lighting (Exterior).

The Association shall have the right to establish rules and regulations to govern the use of exterior lighting in Foxcliff Estates Subdivision. This shall include, but not be limited to types allowed and hours of illumination.
- f. Signs.
  1. Rules and restrictions for signs on private property are the same as Signs, Section IX, D, 1, g.

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2. Signs identifying a business are prohibited. For contractor signs, see the Register of Regulations.
- g. Vehicles.
  1. The intent of the Covenants is to allow those vehicles that would be typically accepted in a residential subdivision such as Foxcliff Estates Subdivision. This includes but is not necessarily limited to cars, pick-up trucks, motorcycles, and golf carts that are designed and intended for use on golf carts.
  2. Also allowed are commercial vehicles that are making deliveries, but not commercial vehicles (included but not limited to dump trucks, backhoes, dozers, etc.) that are parked/stored at a lot or in the subdivision on a frequent basis such as daily/weekly/monthly etc.
  3. Although vehicles with signage can legally be considered a commercial vehicle, it would not be intended that these vehicles be prohibited.
  4. Parking and/or storage of motor homes, campers, boats or other similar type vehicles are prohibited except in the storage area designated by the Board. Motor homes may be parked at a house for up to two (2) days while being packed, unpacked or cleaned.
  5. No inoperable or unregistered vehicle shall be permitted on any lot unless appropriately garaged.
- E. In general, the Building Control Rules and Procedures shall include, but not be limited to rules with reference to the following.
  1. Lots.
    - a. All lots are and shall be designed for and devoted exclusively for single family residential use.
    - b. No lot shall be re-platted or subdivided to alter the assessment classification of the lot.
    - c. No more than one building shall be erected upon a lot.
    - d. Nothing herein shall be deemed to prevent an Owner from leasing a Living Unit to a single family, subject to the provisions of this Amended Declaration and any Supplementary Declaration.
  2. Type, Size and Construction of Living Units.
    - a. Type.

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1. All construction on said lots shall be new. No building shall be moved onto said lots.
  2. A single-family dwelling with a private attached garage of at least "two (2) car" size is the only type of building that may be erected, altered, placed or permitted on any lot.
  3. Other structures (attached or detached) that may be allowed by the Building Control Committee on a lot include and are limited to decks, docks, gazebos and fences. All other structures and/or buildings are prohibited.
  4. No trailer, mobile home, tent, uncovered basement, shack, shed, detached garage, barn, wall, barrier, pet/animal house/structure or other structure shall be placed or constructed on any of said Lots at any time.
- b. Size of Dwelling.
1. Floor Area.  
All Living Units, exclusive of porches, terraces and/or garage, shall be at least 2,500 sq. ft. In the case of a structure other than a one-story structure, the ground floor area shall be no less than Sixteen Hundred (1600) square feet. The Building Control Committee may allow a smaller ground floor area if confirmed and approved by the Board of Directors for any lot where the topography renders such requirements impracticable.
  2. No such building may exceed two stories in height (not including a "walk-out" basement).
  3. Location on Lot & Easement.
    - a. No Living Unit shall be located on any lot nearer to the front line or the side line than the minimum setback lines shown on the recorded plat thereof or five (5) feet in the case of the side lines and 25 feet in the case of the front and back lines if specific dimensions are not provided on the recorded plat. In order to maintain aesthetic integrity of the community, new home placement on a lot must conform to the placement of existing homes in the area.
    - b. 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 platform in front of the main door may extend over said line, not to exceed five (5) feet.
    - c. The Corporation and/or its representative(s) (Board of Directors and/or the Building Control Committee) is not responsible for the accuracy and/or the location of the lot lines. Prior to the approval of a project, the Building Control Committee is responsible to view the project as it is staked out relative to the lot lines. It is the responsibility of lot owner requesting project approval to assure the accuracy of the lot lines. This shall be executed by a land survey using a competent surveyor

registered in the State of Indiana or other approved method that the location of the lot line is accurate. If the lot line located by the survey is different that the line location perceived by the either lot owner whose lots are bounded by the lot line in question shall provide an agreement signed by the lot owners confirming agreement of the lot line location.

4. Construction Schedule.

2. All Living Units shall be completed on the exterior within twelve (12) months from the date of the 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 14 months from the date of the start of construction.

b. Construction projects (other than Living Units) tree removal, and landscaping projects must be started within six (6) months from the date of BCC approval letter. If not started within said time frame, the owner must reapply for approval.

5. Contractor Requirements.

Contractor requirements shall be recommended by the Building Control Committee, approved by the Board of Directors and included in the Building Control Rules and Procedures.

6. Site Cleanliness.

During the period of construction the lot shall be kept and maintained in a sightly and orderly manner. Trash shall be contained on a daily basis. Roadways shall be free of debris. All debris is to be removed from Foxcliff Estates Subdivision.

7. General Requirements.

2. No building, sign, fence, wall, residence, other structure, and/or other improvement/modification to the lot shall be commenced, erected, retained, improved, repaired, altered, made or done without the prior written approval of the Building Control Committee.

b. Adjoining neighbors shall be given written notice of all proposed projects prior to Building Control Committee approval (i.e. landscaping and detached structures).

c. For projects other than Living Units, the Building Control Committee shall specify the time limitation.

8. Other Issues and General Information.

a. Omission of rules, regulations, and/or procedures for specific situations shall not constitute approval of specific situations.

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- b. As times change and new issues arise, the Association reserves the right to modify rules, regulations, procedures, and other applicable documents to fulfill the intent of the Articles of Incorporation, the Covenants, and other documents as may be applicable.
  - c. The Association shall have no financial responsibility for work that is performed on a lot(s).
  - d. 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 rebuilt with the approval of the Building Control Committee, or the lot restored to a slightly and natural condition as approved by the Building Control Committee within a reasonable time to be determined by the Building Control Committee.
9. Heating/Cooling Systems.
- Energy systems shall be electricity or natural gas. Any other energy technology must be approved by the Building Control Committee and by the Board of Directors. Any tank for storage of fuel is prohibited.
10. Sewage Disposal
- a. No septic or other private sewage disposal system shall be approved for any lot for whom the Community Sewer System is available as certified by the Building Control Committee.
  - b. In the event that the Community Sewer System or the Community Water 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(s) at his expense within one (1) year of the date of the completion of said extension as certified by the Building Control Committee and hereby agrees to pay such tap-on and service fees as are established by the Public Service Commission of Indiana for said System(s). (R)
  - c. No construction shall commence on any lot unless and until complete plans and specifications for the installation of septic or other private sewage disposal systems on said lot have been submitted to and approved by the appropriate public authority of Morgan County having control over the approval thereof.
11. Driveways & Curbs.
- All plans for driveways are to be approved in accordance with the Building Control Rules and Procedures. Loose gravel and/or stone driveway surfaces are not permitted as a permanent driveway for houses built after 2003, or for houses built before 2003 that install a new addition, expansion, and/or relocation to an existing driveway. No curbs are allowed.
12. Site Elevation and Drainage Issues.

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- a. Change in Elevations of lot – See Building Control Rules and Procedures.
  - b. No improvements, alterations, repairs, excavations, changes in grade, or other work that in any way alters any lot from its natural or improved state shall be made or done without the prior written approval of the Building Control Committee, except as otherwise expressly provided in this Amended Declaration.
  - c. Erosion Control  
Prior to the start of, during, and upon conclusion of construction, proper erosion control methods shall be implemented.
  - d. Drainage  
A lot owner may not use artificial channels or means to divert water from the member's lot to another lot. Each lot owner is responsible to use said property so as to not cause damage to other lots. Appropriate and adequate swales shall be created between adjoining lots that permit proper water drainage.
13. Landscape.
- a. Landscaping shall be located and maintained in such a manner as to not impede the vision of persons driving, walking, etc. No screen plantings over 36 inches high shall be permitted between the street right-of-way and the building setback line.
  - b. Irrigation Systems – Proposed irrigation systems must be approved by the Building Control Committee. Water hook-up must be through Mapleturn Utilities and use of lake water is prohibited.
14. Detached Structures.
- a. Decks and Gazebos.  
No deck, gazebo, or other structure may be constructed without the prior approval of the Building Control Committee. ®
  - b. Decks.  
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.
  - c. Fences/Barriers.  
No fence, wall, or hedge shall be erected or planted without Building Control Committee approval. No chain link, woven wire, or fencing of similar style shall be allowed.
15. Miscellaneous.
- a. Mailboxes shall be supplied by the Association. All Federal/State regulations for mailbox use apply.

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- b. Antennas – Rules and Regulations for Antennas shall be established by Building Control and approved by the Board of Directors.
- c. Trash / Debris – general.  
No Outdoor underground receptacles for ash or garbage shall be allowed. No trash pile or other unsightly or objectionable material or object/thing shall be allowed or maintained on any lot.
- d. Storage of trash/garbage cans shall be in the garage.
- e. Outside lights – No outside lights shall be erected in such a manner that impinges on neighbors' property/privacy.

16. Maintenance of Tract.

- a. An owner shall keep all lots owned by him, and improvements thereon, in good order and repair and free of debris all in a manner and with such frequency as is consistent with good property management in general and is in keeping with the surrounding lots in specific.
- b. Owners of unoccupied lots shall at all times keep and maintain their property in this subdivision in an orderly manner causing weeds and other growth to be cut and maintained with such frequency as is consistent with good property management in general and is in keeping with the surrounding lots in specific.
- c. Accumulation of rubbish and debris on the premises shall be prohibited. This obligation shall include the cleanup of leaves, sticks, limbs and other debris along the lake shore or the water in the immediate vicinity of an owner's lot. The Building Control Committee shall be responsible for setting standards of lot maintenance within the subdivision. These standards may or may not be written in the Building Control Rules and Procedures, but they shall be approved by the Board of Directors.

17. Lot Classification/Reclassification.

- a. There are three (3) classifications of lots in the Foxcliff Estates Subdivision. These include the following:
  1. Improved Lot – any lot upon which construction of a living unit (structure intended for use and occupancy as a residence by a single family) or any appurtenant structure thereto has commenced.
  2. Unimproved Lot – a lot which is not an improved lot.
  3. Unbuildable Lot – any lot which the BCC has deemed a lot unbuildable for one or more of the following reasons:
    - Severe topography precluding a reasonable building site according to current construction technology.
    - Lack of convenient accessibility via a passable road.

CHICAGO TITLE

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- Lack of reasonable availability of utilities.
  - Underground utilities crossing the property.
  - Undue danger of damage to adjacent properties.
- b. Requests concerning the classification of a lot shall be made to the BCC. The Committee shall recommend lot classification modifications to the Board. The Board shall approve or disapprove the modification.
- c. Reclassification can be made from Unimproved to Unbuildable or Unbuildable to Unimproved. If the lot was originally classified as unbuildable, it can be reclassified as unimproved. The owner must pay the difference of all previous assessments between the unimproved and unbuildable rates from the time the classification was changed to unimproved. No assessment fees will be reimbursed for a change from Unimproved to Unbuildable.
- d. The request for reclassification shall be submitted by the lot owner to the BCC. Reclassification could take up to 12 months depending on the documentation that the owner is required to submit to the BCC.
- e. If severe topography is the reason that the lot was originally classified as unbuildable, then the owner will be required to submit bore samples and/or recommendations by a geotechnical engineer registered in the State of Indiana and qualified in evaluating stability and the extent of possible remedies. The number of bore samples required shall be determined by the geotechnical firm so they do not have to make undue extrapolations to cover the entire project site.
18. Exceptions.
- a. The Building Control Committee may issue temporary or permanent permits to except or waive any prohibitions expressed or implied by this Section IX, provided the Building Control Committee can show good cause and acts in accordance with adopted policies and procedures and such permits are on a lot-by-lot basis and are approved by a two-thirds (2/3) vote of the Board of Directors.
- b. Should the Building Control Committee issue an exception or waive any prohibitions that are approved by the Board, the lot owner shall understand that laws and/or regulations (State or otherwise) may exist that cause the need for approval(s) of lot owners – both adjacent and in the general vicinity. The owner receiving the Association approved exception shall be responsible for communicating with agencies (such as title companies, agencies, etc.) to determine the number of lot owners' signatures that shall be required for the agencies to accept the exception.
19. Process to change the Building Control Rules and Procedures.
- a. Building Control Committee Rules and Procedures may be amended by a two-thirds (2/3) vote of the Building Control Committee present at the meeting.

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- b. The proposed amendment shall be submitted to Covenant Bylaw/Register of Regulations committee for review and comment. If necessary, the committee will return the proposed amendment with suggestions for change to BCC.
  - c. Once the covenants committee approves the proposed amendment, the amendment is sent to the Board of Directors for pre-approval.
  - d. The proposed Building Control Rules and Procedures amendments shall then be made available for a period of 30 days to the "A" and "B" members in good standing for review and comment.
  - e. Any recommended modifications from the "A" and "B" members shall be returned to the BCC for review and the Building Control Committee will incorporate modifications as deemed appropriate. The Building Control Committee shall present the final amendments to the Board. A record of suggested modifications (approved and unapproved) will be maintained by the BCC.
  - f. The final amendments shall be approved by the Board of Directors by an affirmative vote of a two-thirds (2/3) majority of the Directors present at the meeting of the Board.
  - g. All approved changes shall be placed in the Register of Regulations.
- F. Easements.
- 1. Public Health & 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 Common Area in the performance of their duties.
  - 2. Utility and Drainage Easements.  
Easements for the installation, operation, and maintenance of public utilities and for the maintenance and correction of surface water drainage are reserved along and within a five (5) feet of all side lot lines as shown on the recorded plats and run in favor of all public utilities, including the Corporation. Such easements shall be kept clear of all other improvements, including but not limited to buildings, patios, or other paving, other than crossing walkways or driveways whether or not the improvements are required to be approved by the Building Control Committee.
- X. Enforcement

The Corporation and any owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, guidelines, including but not limited to rules or decisions of the Building Control Committee, and any charges or liens now or hereafter imposed by the provisions of this Amended Declaration and of Supplementary Declarations, but the Corporation shall not be liable for damages of any kind to any person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any person to enforce any of these Restrictions or to invoke any available remedy with respect to a violation or violations thereof, shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or an estoppel of that person to enact any

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right available to him upon the occurrence, reoccurrence or continuation of any violation or violations of the Restrictions.

In the event the Corporation institutes, in any court of competent jurisdiction, any proceeding, at law or in equity, to enforce these covenants and restrictions, it shall be entitled to collect reasonable costs and attorney fees incurred for enforcing the same.

XI. Amendment.

This Amended Declaration may be amended at any time by an instrument with affirmative signature of three fourths of the members in good standing casting a vote on the issue, so long as the number of members voting constitutes at least 25% of the total Class A & B membership. A meeting shall be called for such purpose with notice to all lot owners of the time, place and nature of the proposed change(s) at least twenty days prior to the meeting. Solicitation of further votes may be made within 10 days following this meeting. Any such amendment shall be recorded in the office of the Recorder of Morgan County, Indiana.

XII. Interpretation.

The underlined titles preceding the various paragraphs and subparagraphs of this Amended Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Amended Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

XIII. Duration.

The foregoing Covenants and Restrictions are for the mutual benefit and protection of the present and future lot owners, and the Corporation, and shall run with the land and shall be binding on all parties and all persons claiming under them. The Covenants and Register of Regulations Committee will review the documents annually.

XIV. Severability.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

XV. Counterparts.

This Amended Declaration and any amendments hereto may be executed in several counterparts and when so executed shall constitute one agreement binding upon all of the owners hereunder, notwithstanding that all are not signatories to the original or the same counterpart.

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IN TESTIMONY WHEREOF, we the undersigned, being the Corporation and owners of lots in the Foxcliff estates Subdivision, hereby ratify and accept the foregoing Amended Declaration by the execution hereof and by the execution of separate signatures pages, which shall, together with this Amended Declaration, constitute the entire agreement.

WITNESSETH the execution hereby the undersigned on behalf of Foxcliff Estates Community Association, Inc. (the "Corporation") dated this 10th day of December, 2009

Foxcliff Estates Community Association, Inc.

By: [Signature]

Title: Vice President

Rick E. Cooley

Witness:

By: [Signature]  
FICA Secretary

JUDY RATLIFF

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REPEAT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."

Name: [Signature]  
Printed: Rick E. Cooley

State of Indiana ss:  
County of Morgan

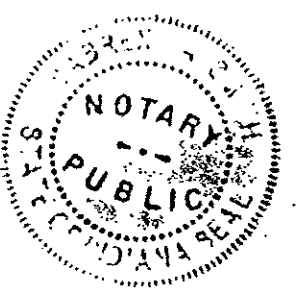
On the 10th day of December, 2009 before me personally came Rick Cooley and Judy Ratliff who are known to me to be the Acting President and Secretary of the Foxcliff Estates Community Association, Inc. and who acknowledged execution of the foregoing Amended Declaration and being duly sworn, stated that the statements set forth therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of December, 2009

[Signature]  
Notary Public Residing in Morgan County

My commission expires: 9/16/2014

Printed Signature Sabrina Smith



[Signature]

Notarized by Notary Public Sabrina Smith

EXHIBIT "A"

TO AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS OF FOXCLIFF ESTATES SUBDIVISION (THE DEVELOPMENT AREA)

The South half of the Southwest quarter of Section 11, North half of the Northwest quarter and the South half of the North quarter of Fraction Section 11, which lies South of White River, except that part on the West side thereof described as being 40 acres off of the West side of Lots 5 and 6 in said Fractional Section 11.

Also, all that part of the Northwest quarter of the Southeast quarter of Section 11, lying South of the present channel of White River now being a part of Lot No. 4 of said Fractional Section 11.

Also, all that part of the Northeast quarter of the Southeast quarter of Section 11, lying South of the present channel of White River. Also, the Southwest fraction, West of White River, being otherwise described as the Southwest Fractional quarter of Section 12.

Also, all that part of the Northwest quarter of the Southwest quarter of Section 12, lying North of the above described 43.22 acres and South and East of the former channel of White River and West of 82.87 acre tract formerly owned by John Tackett, lying mostly in the Southwest quarter of said Section 12, and described in a deed dated June 7, 1917, and recorded in Deed Record No. 89, page 549.

Also, Twenty-five (25) and 50/100 acres off of and across the entire North end of the West half of the Northwest quarter of Section 13.

Also, the Northwest quarter of Section 14.

Also, the north half of the North half of the Southwest quarter of Section 14. The Northeast quarter of Section 14, except the following part thereof: Beginning at the Southeast corner of said tract and running thence West 8.50 chains, thence North 9 chains, thence East 4.50 chains, thence North 8 chains, thence North 34 degrees West 4.75 chains, thence North 24 degrees East 3 chains, thence North 38 degrees East 4.75 chains, thence East to the East line of said tract, thence South to the place of beginning.

Also, the North half of the Northwest quarter of the Southeast Quarter of Section 14.  
All in Township 12 North, Range 1 East.

Also, parts of the East half of Section 14, Township 12 North, Range 1 East and the West half of Section 13, Township 12 North, Range 1 East more particularly described as follows:

A part of the Northeast quarter of said Section 14, Township 12 North, Range 1 East, more particularly described as follows: Beginning at the Southeast corner of said quarter section, thence West on and along the South line of said quarter section for a distance of 270.70 feet, thence North parallel to the East line of said quarter section for a distance of 1125.40 thence North 34 degrees West for a distance of 198.00 feet, thence North 38 degrees East for a distance of 313.50 feet, thence East parallel to the North line of said quarter section for a distance of 200.0 feet to a point in the East line of said quarter section, thence South on and along said East line for a distance of 1798.50 feet to the point of beginning. Also, a part of the West half of the Northwest quarter of Section 13, Township 12 North, Range 1 East, more particularly described as follows: Beginning at the Southwest corner of said quarter section, thence North on and along the West line of said quarter section for a distance of 1798.50 feet, thence East parallel to the North line of said quarter section for a distance of 238.0 feet, said point lying in the center line of a creek approximately 40 feet in width, thence deflecting right on and along the center line of said feet to a point in the East line of said half quarter section, section for a distance of 12.60 feet to the southeast corner of said half quarter section, thence west on and along the south line of said half quarter section for a distance of 1320.00 feet to the point of beginning.

Also, a part of the Northeast quarter of the Southeast quarter of said Section 14, Township 12 North, Range 1 East, more particularly described as follows: Beginning at the Northeast corner of said quarter-quarter section, thence South on and along the East line of said quarter-quarter section to a point lying in the center line of Maple Turn Road, thence in a Northwesterly direction on and along the center of said Maple Turn Road for a distance of 413.55 feet, thence North parallel to the East line of said quarter-quarter section for a distance of 907.67 feet to a point in the North line of said quarter-quarter section, thence East on and along said North line for a distance of 270.70 feet to the point of beginning.

Also, the Northwest quarter of the Southwest quarter of Section 13, Township 12 North, Range 1 East.

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Also, a part of the East half of Section 14, Township 12 North, Range 1 East, more fully described as follows:

A part of the Northeast quarter of said Section 14, beginning on the Quarter Section line at an iron pipe 270.7 feet West from the East quarter post of said Section 14, thence continuing West on the Quarter Section line 95.0 feet; thence North 17 degrees 18 minutes West 622.05 feet to an iron pipe marking the Northwest corner of real estate owned by Williams; thence East parallel to the Quarter Section line 290.3 feet to an iron pipe; thence South one (1) degree zero (0) minutes West parallel to and 270.7 feet West of the East line of said Section 594.0 feet to the place of beginning, subject to Water flood rights for Lake construction.

Also, a part of the Southeast quarter of said Section 14, beginning on the Quarter Section Line at an iron pipe 270.7 feet West from the East Quarter Post of said Section 14, thence south zero (0) degrees 42 minutes West parallel to the East line of said Section 255.15 feet to an iron pipe thence West parallel to the Quarter Section line 50.0 feet to an iron pipe; thence North nine (9) degrees zero (0) minutes West 258.98 feet to a point on the Quarter Section line 95.0 feet West of the place of beginning; thence East along the Quarter Section Line 95.0 feet to the place of beginning, subject to Water flood rights for Lake Construction.

ALSO, The Northeast quarter of the Northeast quarter of Section 22; the Northwest quarter of the Northwest, the West half of the Northeast quarter, the East half of the Northwest quarter of Section 23, all in Township 12 North, Range 1 East; Ten (10) acres 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.

#### AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS FOXCLIFF ESTATES SUBDIVISION (THE TRACT)

The following described real estate in XIV, XI and XIII, Township 12 north, Range 1 East:

Beginning at the West quarter post of said Section XIV; thence North 1 degree, 35 minutes West line of said along the Section 1,333.84 feet; thence North continuing over and along said Section line North 1 degree, 35 minutes West, 1,035.30 feet; thence East 5 feet to an iron pin in the Northwest corner of Lot 283, Section X, Foxcliff Estates as per plat thereof recorded in Deed Record 226, Page 554; thence South 79 degrees 11 minutes East 40.25 feet to the Southwesterly most corner of Lot 238, Section VIII, Foxcliff Estates as per plat thereof and recorded in Deed Record 210 Page 24; thence 28 degrees 37 minutes West 337.08 feet to an iron pin; thence North 4 degrees 33 minutes West 40 feet to an iron pin; thence South 80 degrees 27 minutes East 128.15 feet; thence South 71 degrees 25 minutes East 598.5 feet to the P.T. of a curve to the left having a radius of 200 feet; thence North thence along said curve 158.80 feet to a P.T. of said curve; thence North 62 degrees 19 minutes East 353.83 feet to the Southwest corner of Lot 234 Section III Foxcliff Estates as per plat thereof and recorded at Deed Record 213, Page 86; thence North 16 degrees 56 minutes West 238 feet; thence North 80 degrees 56 minutes East 145 feet; thence North 77 degrees 53 minutes East 205.85 feet; thence South 76 degrees 13 minutes East 201.97 feet; thence North 37 degrees 31 minutes West 201.56 feet; thence South 79 degrees 50 minutes West 306.99 feet; thence North 3 degrees 58 minutes West 158.75 feet; thence South 86 degrees 2 minutes West 150 feet; thence North 16 degrees 47 minutes West 202 feet; thence South 87 degrees 17 minutes West 15.78 feet; thence North 9 degrees 3 minutes East 48 feet; thence North 1 degree 4 minutes East 40.39 feet; thence south 80 degrees 57 minutes East 477.46 feet; thence North 22 degrees 32 minutes West 444.69 feet to the Southeast corner of Lot 182 Section XIII of Foxcliff Estates as per plat thereof recorded in Deed Record 233, Page 307; thence North 60 degrees 40 minutes West 129.07 feet; thence North 47 degrees 33 minutes West 158.86 feet; thence North 34 degrees 18 minutes East 157.68 feet; thence Northerly over and along a curve having a radius of 840 feet 857.06 feet (chord bearing North 17 degrees 41 minutes West 820.46 feet) to the P.T. of said curve; thence tangent to said curve North 11 degrees 33

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minutes East 45.40 feet; thence North 66 degrees 49 minutes West 541.42 feet; thence Northern 3 degrees 4 minutes West 44.60 feet to an iron pin; thence North 23 degrees 11 minutes East 335 feet more or less to the South bank of White River; thence meandering with the bank of White River Easterly to the Southeast corner of Lot 90 in Foxcliff Estates Section V as shown on the plat thereof recorded at Deed Record 209, Page 167 in the Office of the Recorder of Morgan County, Indiana; thence South 68 degrees 25 minutes West 205.0 feet to a P.C.; thence Southerly along a curve to the right having a radius of 1,450 feet 457.36 feet to the point of tangent; thence tangent to said curve 0 degrees 5 minutes East 523.48 feet; thence southwesterly over and along a roadway know as Somerset Drive or River Road to point of its intersection with Foxcliff Drive East; thence Southerly along the east right-of-way line of Foxcliff Drive East to the Northwest corner of Lot 445 as shown on the plat of Foxcliff Estates Section XIX recorded Deed Record 226, Page 555 in the Office of the Recorder of Morgan County, Indiana; thence South 72 degrees 35 minutes East 249.87 feet to an iron pipe; thence North 85 degrees 2 minutes East 510 feet to an iron pipe; thence South 4 degrees 58 minutes East 244.43 feet to an iron pipe; thence South 67 degrees 11 minutes East 910.75 feet; thence South 66 degrees 46 minutes 30 seconds East 227.53 feet to an iron pin which is 1037.93 feet North of the East quarter post of Section 14; thence South on said Section line 119.97 feet; thence North 71 degrees 32 minutes 30 seconds East 130; thence South 17 degrees 5 minutes East 228.32 feet; thence South 38 degrees 7 minutes 30 seconds East 605.69 feet; thence South 38 degrees 7 minutes 30 seconds East 354.06 feet; thence South 38 degrees 7 minutes East 24 degrees 1 minute East 162.3 feet thence South 5 degrees 7 minutes West 296.40 feet; thence North 33 degrees 15 seconds West 165.35 feet; thence North 12 degrees 41 minutes 15 seconds West 156.63 feet; thence North 48 degrees 37 minutes 30 seconds West 321 feet; thence South 58 degrees 25 minutes West 379.45 feet; thence South 0 degrees 13 minutes 30 seconds East 350 feet; thence South 89 degrees 47 minutes 30 seconds West 200 feet; thence South 0 degrees 13 minutes 30 seconds East 2.5 feet to the P.C. of a tangent curve to the right of 300 foot radius; thence along said curve 189.80 feet to the P.T. thereof; thence tangent to said curve 76.81 feet to the centerline of Maple Turn Road; thence North 54 degrees 7 minutes 30 seconds West along the centerline of said road 180.33 feet; thence North 0 degrees 16 minutes 30 seconds West 750.51 feet; thence South 89 degrees 4 minutes 30 seconds West 50 feet; thence North 9 degrees 55 minutes 30 seconds West 45 feet to an iron pipe on contour elevation 644.0 being sea level; thence meandering along said contour with the shoreline of Lake Foxcliff East to a point at the Southeast corner of Lot 389, Foxcliff Estates Section XV as shown on the plat thereof recorded at Deed Record 226, Page 407 in the Office of the Recorder of Morgan County, Indiana; thence South 88 degrees 15 minutes 30 seconds West 298.05 feet; thence South 0 degrees 11 minutes West 666.10 feet; thence South 0 degrees 11 seconds East 30 feet to the centerline of Maple Turn Road; thence over and along said centerline 1,333.69 feet; thence North 2 degrees 7 minutes West 667.07 feet; thence North 15 degrees 0 minutes West 345 feet; thence North 2 degrees 24 minutes 30 seconds West 130 feet; thence North 10 degrees 18 minutes 30 seconds East 128 feet; thence North 49 degrees 56 minutes West 365.2 feet; thence over and along a curve to the right of 550 foot radius a distance of 491.96 feet; thence South 57 degrees 30 minutes West 236.33 feet; thence North 76 degrees 42 minutes West 480 feet; thence South 80 degrees 2 minutes West 137.66 feet; thence South 64 degrees 48 minutes West 183.43 feet; thence North 25 degrees 12 minutes West 200 feet; thence South 64 degrees 48 minutes West 314.57 feet; thence South 25 minutes 12 degrees East 200 feet; thence South 64 degrees 48 minutes West 254 feet; thence South 34 degrees 45 minutes West 75.94 feet; thence South 32 degrees 36 minutes West 100 feet; thence South 7 degrees 54 minutes East 472.55 feet; thence South 1 degrees 46 minutes West 46.29 feet; thence South 1 degrees 46 minutes West 476.29 feet; thence South 89 degrees 22 minutes West 190.18 feet to the West line of said Section XIV thence North 0 degrees 38 minutes West over and along said line to the place of beginning. Also, a part of the southwest Quarter of the Southeast Quarter of Section 11, Township 12 North, Range 1 East, Morgan County, State of Indiana, and more fully described as follows:

Beginning at an iron pin at the Southwest corner of Lot 127 in "Foxcliff Estates - Section VII, Book 212, page 269 in the Morgan County Recorder's Office; thence North 88 degrees 25 minutes East 338.8 feet along the South line of said Lot 127 to an existing iron pipe at the Southeast corner thereof; thence South 0 degrees 03 minutes East 65.0 feet along the West line of Lot 126 in Foxcliff Estates - Section V to an existing iron pipe at the Southwest corner thereof; thence South 75 degrees 33 minutes East 13 9.0 feet along

the South line of said Lot 126 to an iron pipe at the South corner thereof thence South 64 degrees 56 minutes West 277.13 feet to an iron pipe; thence North 88 degrees 31 minutes West 180.77 feet to an iron pipe in the East right-of-way of a platted road in aforementioned Section VII, thence along said East right-of-way, North 12 degrees 56 minutes West 147.30 feet to an iron pipe at the P. C. of a curve to the right with a radius of 900 feet; and then over and along said curve 60.0 feet to the point of beginning and containing 1.629 acres, more or less.

ALSO, A part of the North Half of the Southwest Quarter of Section 11 in Township 12 North, Range 1 East, Morgan County, State of Indiana, and more fully described as follows:

Commencing in the West line of the plat of Foxcliff Estates, Section XIII, as it is recorded in Deed Record 233, page 307, of the Morgan County Recorder's Office, at a point South 3 degrees 04 minutes East 44.60 feet from the Southwest corner of Lot 175 in said plat; thence South 66 degrees 49 minutes East along the South right-of-way of Warwick Road 326.97 feet to the true point of beginning; thence South 66 degrees 49 minutes East over said right-of-way 169.05 feet; thence South 33 degrees 47 minutes 45 seconds West 190.0 feet; thence North 57 degrees 14 minutes West 151.62 feet to a proposed road right-of-way; thence North 19 degrees 07 minutes East along said proposed right-of-line 134.38 feet to the P. C. of a tangent 25 foot radius curve to the right; thence over and along said curve 41.04 feet to the true point of beginning and containing .689 acres, more or less, subject however, to a 10 feet wide drainage easement off the East side thereof. The above described parcel to become Lot 179 and the plat of Foxcliff Estates, Section XVIII, when same is recorded.

ALSO, the real estate contained in the subdivision known as Foxcliff Estates South Section XXX which consists of lots 611 and 612, lots 630 through 650 inclusive and lots 663 through 667 inclusive and the roadways and common areas described in the plat thereof recorded in Deed Record 238, Page 322 of the Morgan County Recorder's Office.

EXCEPT: Beginning at the Southwest corner of Lot 106 Foxcliff Estates Section V recorded in Deed Record 209 Page 167; thence South 75 degrees 20 minutes East 465 feet; thence South 48 degrees 55 minutes East 315 feet; thence South 40 degrees 20 minutes West 336.1 feet; thence South 21 degrees 35 minutes East 194.05 feet to an iron pipe in the Northeast corner of Lot 130 Foxcliff Estates Section VII recorded in Deed Record 212 Page 268; thence South 78 degrees 12 minutes West 197.2 feet; thence on a curve to the left having a radius of 150 feet; thence tangent to said curve 37 degrees 46 minutes East 78 feet; thence over and along a curve to the right having a radius of 300 feet 135.42 feet; thence North 11 degrees 46 minutes West 170 feet; thence South 78 degrees 14 minutes West 50 feet; thence South 69 degrees 52 minutes West 203.61 feet; thence South 47 degrees 46 minutes West 130; thence South 27 degrees 37 minutes West 375 feet; thence North 4 degrees 37 minutes East 122.71 feet; thence North 5 degrees 33 minutes 30 seconds East 188.40 feet; thence North 4 degrees 37 minutes West 220.33 feet; thence over and along a curve having a radius of 840 feet to the left 102.44 feet to a P. T.; thence North 2 degrees 23 minutes West 163.14 feet; thence North 58 degrees 3 minutes East 50 feet; thence over and along a curve to the left having a radius of 800 feet for a length of 133.18 feet; thence North 26 degrees 17 minutes 30 seconds of 133.18 feet; thence North 26 degrees 17 minutes 30 seconds West 276.7 feet; thence over and along curve to the left having a radius of 800 feet for a length of 168.95 feet; thence to a P. T.; thence North 38 degrees 23 minutes 30 seconds West 192.58 feet; thence along a curve to the right having a radius of 510 feet to a P. C.; thence North 20 degrees 59 minutes 30 seconds West 34.65 feet to a P. C.; thence over and along a curve to the right having a radius of 70 feet but a length of 108.75 feet to a P. C.; thence North 65 degrees 1 minutes 30 seconds East 348.67 feet to the place of beginning containing after said exception acres more or less.

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