

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., its successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.

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

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 private sewage system on said lot have been submitted to and approved by the appropriate public authority of Morgan County having control over the approval thereof, unless central sewer system is available to said lot and the applicable hook-on fee has been paid. In the event central sewer system and/or 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 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 of debris, 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 performance 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 underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antennas, independent of a structure, may be erected without approval of the building control committee.

Easements are also created hereby in favor of the Declarant or the Community Association within fifteen (15) feet of the high-water line of any lake within the properties for the purpose of maintenance

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 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 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 2.

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 Association. Membership shall be appertinent 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 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.

Section 3. Maximum annual assessment. Until January 1, 1983, the maximum annual assessment on any lot conveyed by the Declarant on the real estate described in Exhibit "A" shall be Two Hundred Dollars (\$200.00). From and after January 1, 1983, the maximum annual assessment may be increased each year by not more than Ten percent (10%) above the maximum annual assessment for the previous year without a vote of two-thirds (2/3) of each class of membership approving any such increase in excess of Ten percent (10%).

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 (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 as provided for herein, shall be fixed at a uniform rate for all lots, provided that the assessment for all lots owned by the Declarant shall be fixed at a rate which is twenty-five percent (25%) of the rate for lots owned by the owners when such lots are placed of record by plat.

Section 8. Date of commencement of annual assessments: Due dates. The annual assessments provided for herein shall commence as to each lot on the first day of the month following the conveyance of such lot by Declarant. The first annual assessment shall be adjusted



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 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 11. 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 owner shall pay said assessments when they become due.



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, stream, easement or similar monument or structure.

B. Property not owned by the Declarant may be brought within the jurisdiction of the association or made subject to the provisions of this Declaration only in the manner provided herein. Such annexation of additional property shall require the assent of two-thirds (2/3) of the class A members of the association present, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all class A members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of

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 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

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 and materialmen have been paid in full for work to date. In addition, the fund may be used to pay the following items:

1. Architect and engineer's expenses or fees.
2. The expenses and fees of the escrow agent and any premiums on insurance during construction.
3. All other incidental expenses incurred in connection with costs of construction of roadways and completion of sewer and water lines.

In the case of items not subject to certification by an engineer, payment shall be made upon presentation of an Affidavit executed by an officer of the Developer stating the character of the



## 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  $00^{\circ}-40'-20''$  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  $87^{\circ}-54'-19''$  East along said centerline 1618.02 feet to an iron pin set; thence leaving said centerline South  $02^{\circ}-05'-41''$  East a distance of 245.91 feet to an iron pin set; thence South  $44^{\circ}-26'-50''$  West a distance of 410.00 feet to an iron pin set; thence South  $71^{\circ}-35'-26''$  West a distance of 264.18 feet to an iron pin set; thence South  $62^{\circ}-07'-33''$  West a distance of 464.48 feet to an iron pin set; thence South  $00^{\circ}-00'-00''$  West a distance of 127.29 feet to an iron pin set; thence South  $58^{\circ}-53'-10''$  West a distance of 350.41 feet to an iron pin set; thence South  $00^{\circ}-40'-20''$  East a distance of 233.00 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  $68^{\circ}-34'-02''$  East a distance of 1160.45 feet from last said point; thence South  $31^{\circ}-05'-15''$  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  $30^{\circ}-20'-23''$  West a distance of 980.40 feet from last said point; thence South  $89^{\circ}-19'-40''$  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  $00^{\circ}-40'-20''$  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  $45^{\circ}-40'-20''$  West a distance of 35.36 feet from said P.C.; thence South  $89^{\circ}-19'-40''$  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  $85^{\circ}-17'-45''$  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  $64^{\circ}-07'-36''$  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  $34^{\circ}-06'-21''$  West a distance of 77.53 feet from the last said point; thence leaving said right of way North  $49^{\circ}-57'-38''$  West a distance of 157.00 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.

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REVOCATION OF PRIOR RESTRICTIONS AND DEDICATION TO NEW COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, Foxcliff, Inc. is the owner of lots numbered 611, 612, 630 through 650 inclusive, and 663 through 667 inclusive, in Section XXX, Foxcliff Estate Subdivision as per plat thereof, recorded in Deed Record 238 page 322 in the Office of the Recorder of Morgan County, Indiana, which are subject to certain restrictions recorded August 7, 1978 in Deed Record 264 page 182; and

WHEREAS, said restrictions provide that the same may be revoked or modified by more than two-thirds (2/3) of the property owners in said section, and the Developer is the owner of all lots in said section which are subject to said restrictions, the Declarant does, pursuant to the power reserved therein, now revoke said restrictions, and in lieu thereof, now declares that said lots shall be subject to a certain Declaration of Covenants, Conditions, and Restrictions dated <sup>April</sup> ~~March~~ \_\_\_\_\_, 1981, and recorded <sup>April</sup> ~~March~~ \_\_\_\_\_, 1981 in Deed Record 278, page 469, in the Office of the Recorder of Morgan County, Indiana.

FOXCLIFF, INC.

By: John H. Fewell  
John H. Fewell, President

By: Charles E. Delph  
Charles E. Delph, Secretary

STATE OF INDIANA )  
                          )SS:  
COUNTY OF MORGAN )

Before me, a Notary Public, in and for said County and State, personally appeared John H. Fewell and Charles E. Delph, known to me to be the President and Secretary of Foxcliff, Inc. who acknowledge the execution of the foregoing Revocation, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 1 day of <sup>April</sup> ~~March~~, 1981.



James Bruce Dodd  
Notary Public JAMES BRUCE DODD  
Residing in Morgan County, Indiana

This instrument prepared by James Bruce Dodd, Attorney at Law.

RECEIVED  
FILED  
APR 10 10 12 AM '81  
RECORDER OF  
MORGAN COUNTY