

DECLARATION OF RESTRICTIONS
FOXCLIFF ESTATES SOUTH

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

W I T N E S S E T H:

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

activities of the Building Control Committee.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

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

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

Section 3. Maximum annual assessment. Commencing January 1, 1986 and continuing until December 31, 1987, the annual assessment on any Lot shall be Two Hundred Dollars (\$200.00) except for Lots owned by Declarant which shall be Fifty Dollars (\$50.00). From and after January 1, 1988, the maximum annual assessment shall be estab-

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

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

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

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

Section 6. 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 7. Date of commencement of annual assessments: Due Dates. The annual assessment provided for herein shall be adjusted pro rata according to the number of months remaining in the calendar year in which the Lot is purchased from Declarant. Written notice of annual and special assessments shall be sent to every Lot Owner subject thereto. The due dates for all assessments shall be established by the board of directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on any Lot have been paid.

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

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

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

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

ARTICLE VI

GENERAL PROVISIONS

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

Section 2. Severability in validation of any one of these 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 of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by no less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by no less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded; provided, however, the Declarant may amend the terms, covenants and restrictions of this Declaration at any time during the first ten (10) years from the date hereof with the consent of the association. Any other provision of this section to the contrary, notwithstanding, the Declarant shall not be entitled to amend this Declaration after such time as the Declarant no longer holds any interest in the Properties covered hereunder or in any Properties adjacent or contiguous thereto.

Section 4. Annexation of additional property.

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

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

ARTICLE VII

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

EXHIBIT "B"
Page Four

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

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

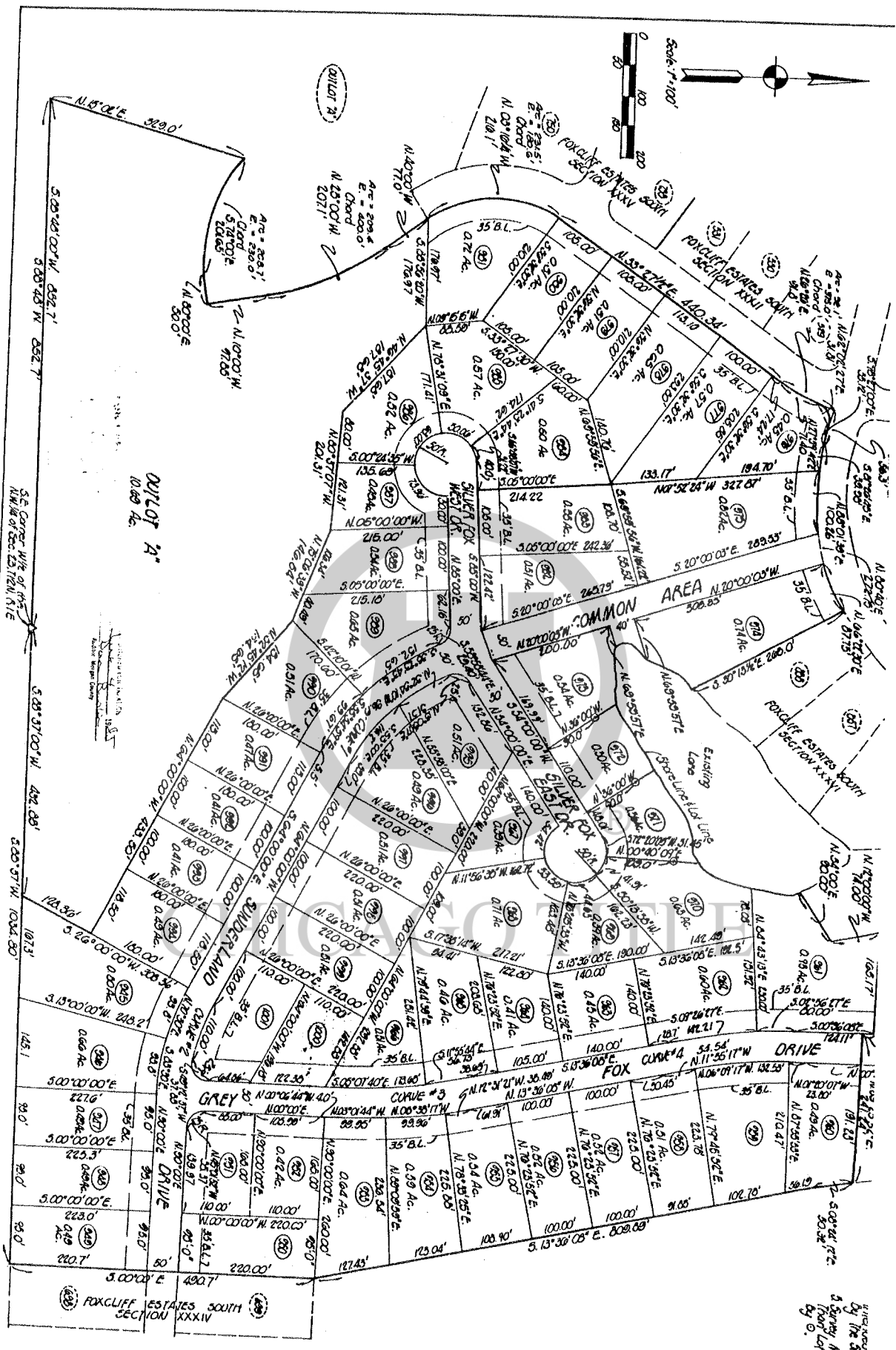
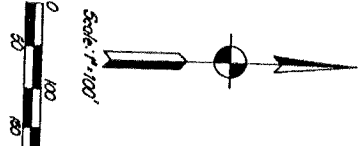
Beginning at the Northwest Corner of Lot 699 in "Foxcliff Estates South" Section 34; thence South 00 degrees 00 minutes East 490.7 feet to the Southwest corner of Lot 698 in said "Foxcliff Estates South" Section 34; thence South 88 degrees 37 minutes West 1034.80 feet to a stone at the southeast corner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

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

RECEIVED
FOR RECORD

MAY 13 3 56 PM '85

Cornelia Fisher
MORGAN COUNTY RECORDER



5/16 Corner W/ile of this
N.W. 1/4 of Sec. 25 T.14N. R.11E

OUTLOT #2
10.69 Ac.

Sheet 1 of 2

It is hereby declared to be necessary
by the Statewide of the State
to Survey Monument (Other
than Lot Corner) indicated
by 0.