

AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOXCLIFF ESTATES SOUTH

THIS AMENDED AND RESTATED DECLARATION (hereinafter referred to as "this Declaration") made this 16th day of March, 1989, by NEWCORP, INC., an Indiana corporation (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the Owner, together with others, of all of the lands shown on Exhibit A, attached hereto and made a part hereof (hereinafter referred to as "the Tract"), including those lands which have been subdivided and are known as "Foxcliff Estates South" (hereinafter collectively referred to as the "Development"), and are 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, as well as those lands upon which are located the clubhouse, tennis courts and swimming pool, shown on Exhibit B attached hereto and made a part hereof;

WHEREAS, the Development is currently subject to the Declaration of Restrictions, Foxcliff Estates South, executed on May 13, 1985, and recorded at Book 299, Page 31, in the Office of the Recorder of Morgan County, as amended by the Amended Declaration of Restrictions, Sections XXX to XXXVI of Foxcliff Estates South, recorded December 10, 1985 at Book 302, Page 377, in the Office of the Recorder of Morgan County, which amendment made all lots owned by Declarant, at that date, part of the Foxcliff Estates South Subdivision, thereby making the entire Development subject to the covenants and restrictions of the Declaration of Restrictions (hereinafter collectively referred to as the "Existing Restrictions");

WHEREAS, The Declarant is in the process of selling and conveying the residential Lots situated within the platted areas of the Development, but, prior to doing so, the Declarant subjected and imposed 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 and scheme of improvement for the benefit and complement of the Lots and lands in the Development and future Owners thereof:

WHEREAS, Foxcliff Estates South Associations, Inc. (hereinafter referred to as the "Corporation"), in order to effectuate a merger of the Corporation and Foxcliff Recreation, Inc. (hereinafter referred to as the "Merging Corporation"), in which the Corporation will be the Surviving Corporation, is amending the Articles of Incorporation of the corporation, and the By-Laws of the Corporation, in the form of the Amended and Restated Articles of Incorporation and the Amended and Restated By-Laws, in order to account for the influx of new members from the Merging Corporation and as is otherwise deemed necessary;

NOW, THEREFORE, the Declarant hereby declares that all of the platted Lots and lands located within the Development as they are or become platted 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 or each of said Lots situated therein and further declares that this Declaration is substituted in toto for the Existing Restrictions. 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. Corporation. Corporation shall mean and refer to the Foxcliff Estates South Associations, Inc., an Indiana Not-For-Profit Corporation, its successors and assigns. Any action to be taken by the Corporation herein shall be done pursuant to authority from its board of directors.

Section 2. South Homeowners Association. South Homeowners Association (hereinafter referred to as the -SHA-) shall mean and refer to the part of the corporation's membership made up of persons who are lot owners in the Development, its successors and assigns. Any action to be taken by the SHA herein shall be done pursuant to authority from the board of directors of the Corporation.

Section 3. Pool and Tennis Association. Pool and Tennis Association (-hereinafter referred to as -PTA-) shall mean and refer to that part of the Corporation's membership consisting of all residents of the Development, those residents of Foxcliff Estates North Subdivision (-North Subdivision-) and others who have voluntarily joined the PTA. The PTA is that part of the Corporation which operates, manages and regulates the swimming pool, tennis courts and clubhouse located within the Development. Any action to be taken by the PTA herein shall be done pursuant to authority-from the board of directors of the Corporation.

Section 4. Owner or Lot Owner. 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 Development and contract purchasers of any Lot or Lots, but excluding those having such interest merely as security for the performance of an obligation and excluding the Declarant.

Section 5. Properties. Properties shall mean and refer to the Development and such additions thereto as may hereinafter be brought

within the jurisdiction of the Corporation and this Declaration in the manner provided herein. Any portion of the Properties hereafter brought within the jurisdiction of the corporation and this Declaration shall thereafter be part of the Development.

Section 6. Common Area. Common Area shall mean and refer to (i) all portions of the Development shown on any recorded subdivision plat which are not Lots, (ii) such portions of the Development as are declared to be Common Area even though located on or constituting part of one or more Lots, (iii) such improvements located, installed or established in, to, on, under, across or through the Development as are declared to be Common Area whether located, installed or established entirely or partially on Lots or portions of the Development which are not Lots, or both: PROVIDED, HOWEVER, that (i) all streets shown on any recorded sub-division plat of the Development and (ii) any lakes, dams, spillways and any drainage facilities which are located on, over, across or through the Properties shall, for all purposes, be considered a part of the Common Area. The clubhouse, swimming pool and tennis courts (hereinafter referred to as "Recreation Facilities") shall, for purposes of the use thereof by any member of the PTA, be a part of the Common Area. The golf course adjacent to and abutting the Development shall not be a part of the Common Area unless hereafter specifically acquired by annexation or purchase.

Section 7. Declarant. Declarant shall mean and refer to Newcorp, Inc., its successors and assigns.

Section 8. ~. Lot shall mean and refer to any plot of land, with the exception of the Common Area, shown upon any recorded subdivision plat or map of the Properties, which plot is identified by number or other such designation.

Section 9. Mortgagee. Mortgagee shall mean the institutional holder of a first mortgage or equivalent lien on any Lot or Lots.

Section 10. Member. Any member of the Corporation who is a PTA member other than a Lot Owner and the Declarant.

Section 11. Board of Directors. Board of Directors shall mean the Board of Directors of the Corporation.

ARTICLE II

Declaration: Common Areas and Maintenance Thereof

Section 1. Declaration. Declarant hereby expressly declares that the Development and each and every Lot within the Development shall be held, transferred and occupied subject to the Restrictions set forth in this Declaration. Members shall only be subject to those Restrictions related to the portion of the Corporation to which they belong. The Owner of any

Lot and all other persons by {i} acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or { ii.} by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained (hereinafter referred to as .these Restrictions.}). By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other persons acknowledge the rights and powers of Declarant and of ~he Corporation with respect to these Restrictions and also for itself, its heirs, personal representatives, successors and assigns, covenant and agree to keep, observe, comply with and perform these Restrictions.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas, subject to all of these Restrictions and S4ch easement shall be an easement running with and appurtenant to each Lot. without limiting the generality of the foregoing, each Owner, his tenants, invitees and guests, shall have, and is hereby granted, a non-exclusive easement and right of ingress to, egress from and access between his Lot and any street shown on the subdivision plat, for pedestrian and vehicular traffic, upon, over and across the street shown, or to be shown, on a subdivision plat of the Development and the several parts thereof. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including, but not limited to, police, fire and other emergency vehicles., trash and garbage collection vehicles, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon and use any street for ingress to, egress from and access between the Lots in the performance of their duties.

Section 3. Maintenance of Common Areas. Maintenance, repairs, replacements and upkeep of the Common Areas shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the expenses to be paid by the Assessments provided for in Article V hereof. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

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

The authorized representatives of the Corporation, shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas for

purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Development for such purposes.

ARTICLE III
Property Rights

Section 1. Residential Use. Each Lot is for single family residential purposes only, no building or structure intended for or adapted to business purposes and no apartment house, double house or other multiple-family dwelling shall be erected, placed, permitted or maintained on or in the Development or on any part thereof. No improvement or structure whatever, other than a first-class, private dwelling house and customary outbuildings may be erected, placed, or maintained on any Lots or premises. For the purposes of this Declaration, the Recreational Facilities, and any additions thereto or replacements thereof authorized by the Corporation's Board of Directors, shall be deemed to be single family residential structures.

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 Five Hundred (1,500) 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 a one-story structure, with a total area of not less than One Thousand Six Hundred (1,600) square feet; provided, however, that a smaller ground-floor area may be allowed by the Building Control Committee for any Lot where topography renders such restrictions impracticable.

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

C. All living units shall have inside bathroom facilities.

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

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

F. No living unit shall be located on the Lot nearer to the front line than the minimum setback lines as shown on the recorded

subdivision plat of such properties. No projection of any living unit shall be permitted to extend into or encroach upon the space between said building line and the street adjacent thereto except steps and platforms in front of the main door may extend over said line not to exceed five (5) feet. The Morgan County Zoning Ordinance effective on May 13, 1985, or as thereafter amended (hereinafter referred to as "Zoning Ordinance"), may provide for minimum set-back lines or other zoning restrictions which are at variance with the recorded subdivision plat of one or more sections of the Development. To the extent that the provisions of this Declaration are more restrictive than the Zoning Ordinance, the provisions of this Declaration shall control. Compliance with the zoning Ordinance may be required for issuance, by those agencies of the state or local government having jurisdiction over such matters, of permits for the construction of improvements upon any Lot.

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

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

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

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

Section 4. Golf Course. Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the Lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to the recovery of golf balls from such Lots, the flight of golf balls over, along and through the airspace of such Lots, the use of necessary and usual

equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with the other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a country club.

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

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

Section 7. Approval Required by Building Control Committee. All plans for the construction of private roads and driveways and all building plans for any building, fence, wall or structure 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 any 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 two (2) complete sets of building plans and specifications for the building or other structure as is applicable so desired to be erected, constructed or modified. No structure of any kind, the plans, elevations and specifications of which have not received the written approval of the Building Control Committee and which does not comply fully with such approved plans and specifications shall be erected, constructed, placed or maintained on any Lot. Approval of such plans and specifications shall be evidenced by the written endorsement on such plans and specifications a copy of which shall be delivered to the Lot Owner or Owners of the Lot upon which the prospective building, road or driveway or other structure is contemplated prior to the beginning of such construction. No changes or deviations in and from such plans and specifications as approved shall be made without the prior written consent of the Building Control Committee. The Building Control Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications. Approval of plans and specifications shall not be unreasonably withheld as to any planned roadway or structure which reasonably conforms with the provisions of these Declarations, such

additional regulations as the Building Control Committee may, from time to time, adopt and the general development scheme of the subdivision. Provisions with regard to the organization of the Building Control Committee are set forth herein, in Article IV, Section 4.

Section 8. 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 name signs for such boxes in order that the area be strictly uniform in appearance with respect thereto.

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

A. The right of the Corporation to charge any Member reasonable dues, admission and other fees (hereinafter collectively referred to as -Dues-) for the use of any of the Recreational Facilities situated upon any of the Common Area.

B. The right of the Corporation to suspend the voting rights and the right of any Lot Owner or Member to use the Recreational Facilities or the Common Area for any period during which any assessment against his Lot or Dues remains unpaid and for a period not in excess of sixty (60) days for any infraction of its published rules and regulations. Any Lot Owner may delegate in accordance with the Articles of Incorporation and By-Laws of the Corporation and all rules and regulations established by its Board of Directors, his or her right of enjoyment to the Common Area and facilities to the members of his family, guests or his tenants who reside on the property. Any Member may delegate in accordance with the Articles of Incorporation and By-Laws of the Corporation and all rules and regulations established by its Board of Directors, his or her right of enjoyment to the Recreational Facilities to the members of his family. and guests.

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

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

ARTICLE IV Membership and Voting Rights

Section 1. Membership as a Result of Ownership of a Lot. Every Lot Owner of a Lot in the Development and the Declarant shall be a member of the SHA, PTA and Corporation. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Membership shall automatically transfer with the transfer of a fee simple title to any Lot and the membership rights of the transferor shall also be transferred. Membership of a Lot Owner may be suspended or terminated as provided in the Articles of Incorporation and By-Laws of the corporation as now effective and hereinafter amended.

Section 2. Membership Through PTA. Any person belonging to the PTA shall automatically become a member of the Corporation. Upon termination of membership in the PTA, those persons who are not Lot Owners in the Development shall cease to be members of the Corporation. Membership in the corporation, as a result of membership in the PTA, shall not be appurtenant to any Lot, but shall be particular to each PTA member and their family. Membership in the PTA may be suspended or terminated as provided by the Article of Incorporation and By-Laws of the Corporation as now effective or hereafter amended.

Section 3. Classes of Voting Membership. The Corporation shall have three (3) classes of voting membership:

Class A. Class A members shall be all Lot Owners, except Declarant. Class A members shall be entitled to one (1) vote for each Lot owned, on any matter that comes before the Corporation, including matters evolving out of the SHA and PTA. 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 or exceed the total vote outstanding in the Class B membership.

Class C. Class C members shall be those lot owners of lots in the North Subdivision and any other persons who have been accepted as members of the PTA. Class c members shall not be entitled to vote on any matters of the Corporation.

Section 4. The Building Control Committee. A Building Control Committee consisting of three (3) or more persons as provided in the By-Laws of the Corporation shall be appointed by the Board of Directors.

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

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

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

ARTICLE V
Covenant for Maintenance Assessments

Section I. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Development hereby covenants and each Lot Owner of any Lot by the acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the corporation:

A. Annual or monthly assessments or charges,

B. Special assessments for capital improvements,

C. Special assessments as may otherwise be deemed necessary, such assessments to be established by action of the Corporation and collected as herein provided,

And

D. Recreation assessments for maintenance, operation and management of the swimming pool, tennis courts and clubhouse located within the Development.

The annual and special assessments, as well as the recreation assessment, together with interest, costs and reasonable attorney fees shall be the personal, obligation of the person who was the Lot Owner of such property at the time the assessment or an installment thereof 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 any assessment pursuant to this Declaration shall be a charge on the land and shall be a continuing lien in favor of the Corporation upon the property against which each such assessment is made except as may otherwise be provided herein.

Section 2. Purpose of Assessments. Any of the assessments listed above levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Development and for the improvement and maintenance of the Common Area and Recreational Facilities, and for other purposes as specifically provided herein.

Section 3. Maximum Annual Assessment. Prior to January 1, 1989, the annual assessment on any Lot was limited to Two Hundred Dollars (\$200.00) except for Lots owned by Declarant, which was limited to Fifty Dollars (\$50.00). From and after January 1, 1989, the maximum annual assessment shall be Two Hundred Twenty Dollars (\$220.00) except for Lots owned by the Declarant, which shall be limited to Fifty-Five Dollars (\$55.00). Thereafter, the maximum annual assessment shall be established by the Corporation but may not be increased each year by more than Fifteen Percent (15%) above the maximum annual assessment for the previous year without an affirmative vote of two-thirds (2/3rds) of the vote of each class of members of the SHA 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 Assessments for: Capital Improvements located in Common Areas and Other Purposes. In addition to the annual assessments authorized above, the Corporation may levy in any calendar 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 01: for any other purpose not inconsistent with the Articles of Incorporation or By-Laws of the Corporation as now effective and hereafter amended, provided that any such assessment shall have the consent of two-thirds (2/3rds) of the votes of the members of the Corporation who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Assessment for Operation, Management and Maintenance of the Recreational Facilities. In addition to the annual assessments and special assessments authorized above, from and after January 1, 1989, the Corporation may levy in any calendar year, a recreation assessment, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements in or upon or constituting a part of the Recreational Facilities, and any additions thereto, as well as the cost of any maintenance, management or operation costs thereof (hereinafter referred to as the "Recreation Assessment").

The Recreation Assessment shall be established by the Board of Directors. The amount of the Recreation Assessment may be increased or decreased during any given year as the Board of Directors shall determine by a vote of at least two-thirds (2/3rds) of the members thereof. Recreation Assessments may be payable either during the year in which such expenditure occurs or in installments over more than one (1) year as the Board of Directors may determine appropriate; provided, however, that in no event shall Recreation Assessment attributable to funding any costs of maintenance, management or operation of the Recreational Facilities other than capital improvements, replacements or additions, be payable over more than two (2) year\$ and no Recreation Assessment be payable over a term of months or years longer than the term of any loans or other source of financing obtained by the Corporation for the cost thereof or, where no funds are borrowed, more than ten (10) years.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 or 4 of Article V of this Declaration. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of Article V of this Declaration shall be sent to all SHA members not less than ten (10) 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 the 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 immediately preceding meeting.

Section 7. Rate of Assessment. Annual, special and recreation assessments as provided for herein shall all 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 all other Owners.

Section 8. Date of Commencement of Annual Assessments, Social Assessments and Recreation Assessments; Due Dates. All assessments 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 each assessment shall be sent to every Lot Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Corporation shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on any Lot have been paid.

Section 9. Effect of Non-Payment of Assessments, Remedies of the Corporation. If any assessment or monthly installment of such assessment, if applicable, which a Class A or Class B member is obligated to pay, 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 due date, the assessment shall bear interest from the due date at a rate of interest established each year by the Board of Directors of the corporation, but not less than twelve percent (12%) per annum and the Corporation 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, together with the costs of the action and any expenses related to the collection of the assessment, including, without limitation, attorneys' fees. 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, Recreational Facilities or abandonment of his Lot.

After the date upon which any annual, special or recreation assessment or any installment thereof become due, the Corporation may prepare and file a notice of such unpaid assessment specifying the name of the Lot Owner or Lot Owners liable therefore, the Lot number of the Lot with respect to which such assessment is due, the amount of such assessment [as increased by an allowance for attorneys' fees not to exceed twenty-five percent (25%) of such assessment], the due date of such assessment and a statement that interest accrues from the due date at the then effective rate of interest as established by the Board of Directors of the Corporation.

Section 10. Liability for Dues. PTA dues which remain unpaid shall not become a lien upon any lot owned by the member, but such dues shall be the joint and several liability of each member entitled to the benefits of such membership and the Corporation shall be entitled to assess and collect from each such member the amount of such dues, interest at an annual rate not less than twelve percent (12%) per annum, costs of collection and attorney's fees incurred by the Corporation in collecting such dues.

Section 11. Assessment Liens. 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 Lot by foreclosure or by assignment or deed in lieu of foreclosure, or any purchaser at a foreclosure sale shall take said Lot free and clear of any claim for unpaid assessments and charges accruing prior to the time such Mortgagee takes title to the Lot, except that said Lot 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 Lot. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Collection by Mortgagee. Nothing in this Declaration shall be construed as prohibiting any first Mortgagee from collecting the assessments due as a part of or in addition to any monthly payment due the Mortgagee~ provided any Mortgagee collecting assessments from any other Lot Owner shall pay said assessments when they become due.

ARTICLE: VI
General Provisions

Section 1. Enforcement. The Corporation 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 Corporation 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 of Covenants and Restrictions. Severability or invalidation of anyone 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; provided, however, that notwithstanding any provision hereof to the contrary, 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 Corporation's Board of Directors. 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. Any amendment must be recorded in the Office of the Recorder of Morgan County, Indiana.

Section 4. Annexation of Additional Property. 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 Declaration. 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.

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, Recreational Facilities or portions of the properties not presently part of the Development, 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 Recreational Facilities 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 not 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 Development as provided in Article VI, Section 4 hereof. Declarant reserves unto itself, its successors and assigns, a non-exclusive easement over the roadways of the Development in order to provide access through the Development to and from the adjoining Properties. Declarant further reserves the right to connect to, extend and utilize the utilities that will be located on the Properties. Declarant further reserves the right to permit future Owners of all or any portion of such adjoining Properties to use the Recreational Facilities and 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 corporation 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 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 Corporation at such time as the Declarant deems appropriate but under no condition later than that date upon which the Declarant no longer owns any Lot or any adjacent land subject to

annexation under Section 4 of Article VI.

NEWCORP, INC.,
an Indiana corporation

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

ATTEST
[Signature]
Secretary

This instrument was prepared by Benjamin A. Pecar, Attorney-at-Law, 2300 One American Square, Box 82008, Indianapolis, IN 46282

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Bruce A. Wooldridge and Curtis M. Jacobs, the President and Secretary, respectively, of NEWCORP, INC., an Indiana corporation, and acknowledged the execution of the foregoing Amended and Restated Declaration of Restrictions for and on behalf of that corporation.

Witness my hand and seal this 16th day of March, 1989.

Charliah Gressman
Notary Public

My Commission Expires:

My County of Residence:

CHARLIAH GRESSMAN
NOTARY PUBLIC STATE OF INDIANA
MARION COUNTY
MY COMMISSION EXP JULY 9, 1991

This Instrument was prepared by Benjamin A. Pecar, Attorney-at-Law, 2300 One American Square, Box 82008, Indianapolis, IN 46282