

Changes made and copy printed 2-04-2002

RECORDED  
05/31/2002 13:20:24  
RECORDER  
PATRICIA J CRICK  
ALLEN COUNTY, IN  
  
Doc. No. 202042879  
Receipt No. 16694  
  
DCFD 3.00  
MISL 70.00  
MISL 1.00  
MISL 1.00  
Total 75.00

AMENDED  
  
DECLARATION OF HORIZONTAL  
  
PROPERTY OWNERSHIP  
  
FOXCHASE CONDOMINIUMS, INC.  
  
HORIZONTAL PROPERTY REGIME

Allen County, Indiana  
  
BOOK 6 PAGES 73-96  
DOCUMENT # 83-28119

AUDITOR'S OFFICE  
Duly entered for taxation. Subject  
to final acceptance for transfer.

APR 16 2002

  
AUDITOR OF ALLEN COUNTY

02 2264  
AUDITORS NUMBER

HELINE C EDGER  
FOXCHASE RUN  
IN 46825

74+1087  
DL

AMENDED  
DECLARATION OF HORIZONTAL  
PROPERTY OWNERSHIP  
FOXCHASE CONDOMINIUMS, INC.  
HORIZONTAL PROPERTY REGIME

WITNESSETH:

WHEREAS, the following facts are true:

- A. The original "Declaration of Horizontal Property Ownership Foxchase Condominiums Horizontal Property Regime" was made on August 9, 1983 by Artisans-Stauffer, Inc., an Indiana corporation, and filed of record; and
- B. Amendments to this Declaration have previously been filed of record and this document shall serve as a further Amendment to the Horizontal Property Regime upon the Tract known as FOXCHASE CONDOMINIUMS, INC. subject to the provisions of the Horizontal Property Act of the State of Indiana, and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

- 1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
  - (a) "Act" means the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference.

(b) "Association" means the incorporated association of Co-owners of FOXCHASE CONDOMINIUMS, INC., a corporation, more particularly described in paragraph 14.

(c) "Board of Directors" means the governing body of the Association elected by the Co-owners in accordance with the By-Laws.

(d) "Building" means one of the structures on the Tract in which Homes are located. The Buildings are more particularly described and identified in the Site Development Plan and in paragraph 3 of this Declaration.

(e) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference. The By-Laws may be amended from time to time by the affirmative vote of a majority of the Co-owners and as otherwise provided in the By-Laws, but only to the extent that an amendment is consistent with the Act and this Declaration of Horizontal Property Ownership.

(f) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in paragraph 7 of this Declaration.

(g) "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(h) "Condominium Interest" shall mean the following:

- (1) Fee simple title to a Home.

- (2) An undivided percent interest as tenants in common, together with all other Owners, in the Common Areas and Limited Common Areas of the Tract.
- (3) An exclusive right to use the areas described in the Declaration, Plans and accompanying documents, as "Limited Common Areas" and restricted to the use of the Owner's respective Home.
- (4) A membership in the Association, as hereinafter defined, subject to this Declaration, the By-Laws of said Association, and all governing documents of said Association.
  - (i) "Co-owners" means the Owners of all the Homes.
  - (j) "Floor and Building Plans" means the architectural drawings detailing the layout, location, identification and dimensions of the respective proposed Buildings and Homes located on the portions of the Tracts included in the various phases, to be prepared by Roy McNett & Associates, which said Floor and Building Plans, which prepared and filed in the Office of the Recorder of Allen County, Indiana shall be deemed incorporated herein by reference.
  - (k) "FOXCHASE CONDOMINIUMS" means the name by which the property and Horizontal Property Regime shall be known.
  - (l) "General Development Plan" means the drawing attached hereto as Exhibit "D" and made a part hereof, which drawing is an artist's rendition of the presently contemplated development of the real estate legally described in Exhibit

"A" hereto. However, if any variations occur between the matters depicted on the General Development Plan and those shown on the Site Development Plan, as recorded, the Site Development Plan shall control.

(m) "Home" means one of the living units constituting FOXCHASE CONDOMINIUMS. Each individual unit shall be a separate Freehold estate as provided in the Act, consisting of the space bounded by such unit and being more particularly described and identified on the Site Development Plan and in paragraphs 5 and 6 of this Declaration. For purposes of the application of the Act to this Horizontal Property Regime, the term "Home" as used in this Declaration and all attending documents shall be deemed to be synonymous with the term "Condominium Unit" as used in the Act. Wherever the term "Condominium Unit" is used in the Act, the same shall be deemed to apply to the term "Home" as used in the documents of this Horizontal Property Regime.

(n) "Horizontal Property Regime" means that real estate subject to the Horizontal Property Act of the State of Indiana which has as its Owners those members of Fox Chase Condominiums Association.

(o) "Limited Areas" or "Limited Common Areas" means the limited common areas and facilities as defined in paragraph 8 of this Declaration.

(p) "Mortgagee" means the holder of a first mortgage lien on a Home.

(q) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Home as determined in accordance with paragraph 9 of this Declaration.

(r) "Percentage Vote" means that percentage of the total vote accruing to all of the Homes which is appurtenant to each particular Home and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owners' Home.

(s) "Property" means the Tract and appurtenant easements, including therein any annexations or additions thereto, the Homes, the Buildings, garages, improvements, and property of every kind and nature whatsoever, real, personal and mixed, located upon the Tract and used in connection with the operation, use and enjoyment of FOXCHASE CONDOMINIUMS. The term "Project" shall mean the condominium project known as FOXCHASE CONDOMINIUMS HORIZONTAL PROPERTY REGIME, including therein all "Property" making up the same, as said term has been defined in this paragraph.

(t) "Resident" means any Owner.

(u) "Rules and Regulations" means those Rules and Regulations regarding the operation of the Property, including, but not limited to the use of the Common Areas and Limited Common Areas, as promulgated by a vote of a majority of the Board of Directors of Fox Chase Condominiums Association.

(v) "Site Development Plan" means the layout drawings of the Tract and Buildings for FOXCHASE CONDOMINIUMS prepared by Turnbell Engineering Company, Inc., certified by Keith E. Smith, a Registered Land Surveyor, under the original date of August 9, 1983, representing the first phase of development of the Tract, said layout drawings, together with legal description appearing thereon being

marked Exhibit "C" and incorporated herein by reference. A similar Site Development Plan or plans for the additional phase or phases in the Tract, if any, shall, when prepared and submitted for recordation be likewise deemed incorporated herein and the real estate described therein subject to the provisions of this Declaration.

(w) "Tract" means the real estate described on the attached Exhibit.

2. Declaration. Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Buildings. The number of Buildings shall not be less than Forty (40) and shall contain not more than fifty (50) homes on the Tract, as shown on the General Development Plan. The Buildings shall be constructed in Phases. The Buildings are identified and referred to in the Site Development Plan and in this Declaration by number, said number to be equivalent to street numbers assigned by the Allen County Plan Commission. The Buildings in subsequent Phases of the Tract, if any, shall be similarly identified and referred to in Supplemental Declarations. The Buildings will have one (1) or two (2) stories and will contain separate Homes, as specifically set forth and shown on the Floor and Building Plans.

4. Building Locations. The Site Development Plan shall disclose the location of streets and front building lines set back from said streets. No Building shall be located nearer to a street than said front building lines. No Building may be located less than 14 feet from the side of any other Building. The rear walls of any

two Buildings shall not be less than 25 feet, one from the other. The side of any building may not be closer than 25 feet from the rear of any other Building.

(a) Developer's Improvements. Before any Building shall be used and occupied as a Dwelling, the developer or any subsequent Owner of any building site shall install improvements serving said Building site as provided in the Site Development Plan for the Regime. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by any aggrieved Owner within the Regime.

(b) Permits. Before any site may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the Improvement Location Permit and Certificate of Occupancy as required by the Allen County Zoning Ordinance.

(c) Surface Drainage Easements. Surface drainage easements and Common Areas used for drainage purposes as shown on the Site Development Plan are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easement shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.



(d) Obstructions. All easements shall be kept free at all times of permanent structures except improvements installed by the authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction. Any structure, shrubbery, trees, or other installation located on the easements for public and municipal utilities and sewers, whether temporary or permanent, shall be subject to the paramount right of the utility or sewage treatment works to install, repair, maintain or replace its utility and sewer installation.

(e) Run With The Land; Amendment. The covenants and restrictions herein contained shall run with the land and be effective from the date of recordation of this Declaration, provided, however, ARTISANS-STAUFFER, INC., its successors and assigns shall have the exclusive right within eight (8) years from the date of recording of this Declaration to amend any of the covenants and restrictions contained in this paragraph as well as any other covenants and restrictions contained in this Declaration or the By-Laws, with the approval of the Allen County Plan Commission.

5. Identification of Homes. Each Home will be identified by street numbers assigned by the Allen County Plan Commission.

The legal description for each Home shall be the numerical designation assigned to it as shown on the Floor and Building Plans. By way of example, a given Home shall be legally described as follows: No. 2010 Foxchase Run, FOXCHASE CONDOMINIUMS, a Horizontal Property Regime in Allen County, Indiana.

6. Description of Homes.

(a) Appurtenances. Each Home shall consist of all space within the boundaries thereof as hereinafter defined, and all portions of the building situated within such boundaries, including but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Home wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety, or enjoyment of any other Home or which may be necessary for the safety, support, maintenance, use, and operation of the Building, or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Home shall constitute a part of such Home, whether or not the same are located within or partly within the boundaries of such Home. The interior surface of all doors and windows (excluding frames), in the perimeter walls of a Home, whether or not located within or partly within the boundaries of a Home, and all interior walls within the boundaries of a Home, are considered part of the Home.

(b) Boundaries. The boundaries of each Home shall be as shown on the Plans without regard to the existing construction measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Home, notwithstanding the fact that the Owner shall have the obligation to maintain the roof, sky lights, chimneys, deck, porches and foundation of their Home, and notwithstanding the fact that responsibility for the painting of the exterior of the

Home shall be as set forth in the Rules and Regulations, as shall all other expenses for those areas outside the perimeter walls, the floors and the ceilings of each Home.

In the event any horizontal or vertical boundary lines shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Home because of inexactness of construction settling after construction, or for any other reasons; the boundary lines of each Home shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Home in and to such space lying outside of the actual boundary line of the Home, but within the appropriate wall, floor or ceiling surface of the Home.

(c) Each Home shall carry with it and have inherent therein a "Condominium Interest", as that term is hereinafter defined, and said Condominium Interest shall be inseparable from said Home and shall pass with the fee interest to said Home as an integral part thereof.

7. Common Areas and Facilities. Common Areas means and includes all portions of the Tract and the improvements thereon, except the portion assigned or to be assigned to fewer than all of the Owners, or to the Association, all as provided for in this Declaration, the By-Laws of the Association, and Plans of FOXCHASE CONDOMINIUMS.

Common Areas shall include, but may not be limited to, the following:

(1) the Tract, (2) the yards, maintenance but not replacement of driveways, (3) central water and sanitary sewer mains serving the Buildings, (4) pipes, ducts, electrical wiring and conduits and public utility lines in the areas outside of the interior perimeter walls of the Home, and (5) all facilities and appurtenances located outside of the boundary lines of the Homes, except those areas and facilities expressly defined as part of a Home and/or Limited Area. However, the Common Areas for which the Association shall be responsible for maintenance and/or replacement shall be as more specifically set forth herein in the By-Laws and/or the Rules and Regulations.

8. Limited Common Areas and Facilities. Limited Common Areas shall be those portions of the Common Areas described above which are limited in their use and enjoyment to fewer than all the Owners, but for which maintenance and/or replacement shall be specifically set forth herein or in the By-Laws and/or the Rules and Regulations. Limited Areas and those Homes to which use thereof is limited are as follows:

(a) Patios, Decks and Screened Porches. For many Homes there is a patio, deck and/or screened porch that is designated on the Plans. Each patio, deck and/or screened porch shall be limited to the use and enjoyment of the Homes in the Building to which the patio, deck and/or screened porch is appurtenant and yard areas adjoins, as designated on the Plans. The patio, deck and screened porch to each Home shall be maintained and replaced, if necessary, by the Owner.

(b) Entranceways and Sidewalks. Entranceways and sidewalks through which access to the Home is obtained are limited to the use and enjoyment of the Home or Homes served by such entranceway and sidewalks and shall be maintained and replaced, if necessary, by the Owner.

(c) Driveways. The Association shall be responsible for sealing each Owner's driveway however, every Owner shall be responsible for replacement or repair of their driveway, when the condition of the driveway necessitates its replacement or repair. Notwithstanding this responsibility, the Association will pay the Owner up to the sum of \$1,000.00 for replacement or repair of the Owner's driveway, when necessary, regardless of the size of the Owner's driveway. This payment shall be made by the Association to the Owner, upon receipt of the paid bill for the services performed to replace the Owner's driveway. In no event however, shall the Association pay any more than \$1,000.00 to any one Owner, or their successor in interest by purchase or otherwise, during a ten-year period, for replacement or repair of their driveway.

The roadways to Owner's Homes which are not driveways, shall be maintained, replaced or repaired at the Association's expense, unless such expense is covered by a governmental entity.

(d) Utilities and Improvements Serving Individual Homes. All Utilities lying within the exterior dimensions of the perimeter walls of any Building and exclusively serving a particular Home or Homes within the Project shall be deemed to be Limited Common Areas, and shall be restricted to the use and enjoyment of the Home or Homes which they serve. Such Utilities shall expressly

be deemed to include all Water, Sewer, Gas, Electrical, Telephone and Heating lines, ducts, improvements and facilities of every type or nature whatsoever. Except as may otherwise be expressly provided, such Utilities and all portions thereof lying outside the exterior perimeters of any Building shall be deemed to be and remain Common Areas. In addition to those facilities established as Limited Common Areas above, all Air Conditioning facilities lying within or without the exterior perimeters of any Building and serving any particular Home within any such Building shall be deemed to be Limited Common Areas, and shall be restricted to the use and enjoyment of the Home which they serve and shall be maintained and if necessary, replaced by the Owner. Such Air Conditioning facilities shall include all Air Conditioning ducts, lines and improvements lying within the exterior perimeters of any Building, all Air Condenser Units located or lying outside any Building, and all lines, ducts or facilities connecting any such Condenser with any of the said lines, ducts or improvements within the perimeters of a Building.

9. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Common Areas, as tenants in common with all other Owners, equal to his or her Home's Percentage Interest. The Percentage Interest of each Home shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Homes which, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of FOXCHASE CONDOMINIUMS. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Home in the Common Areas and

Limited Common Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Home shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to FOXCHASE CONDOMINIUMS HORIZONTAL PROPERTY REGIME and the Association upon which the Co-owners are entitled to vote.

10. Encroachments and Easements for Common Areas. If, by reasons of the location, construction settling, or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Home, then in such event, an easement shall be deemed to exist and run to the Co-owners.

11. Real Estate Taxes. Real estate taxes are to be separately taxed to each Home as provided in the Act.

12. Utilities. Each Owner shall pay his or her own utility costs which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses, unless otherwise agreed by a majority of the Percentage Vote of the Co-owners.

13. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Areas of FOXCHASE CONDOMINIUMS in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing, and maintaining of such utilities, including but not limited to

water, sewers, gas, telephones and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits and conduits, on, above, across and under the roofs and exterior walls of the Buildings.

14. Association of Owners. In order to provide for maintenance, repair, replacement, administration and operation of the Property and in compliance with the provisions of the Act, there is hereby created an association of the Co-owners of the Homes in FOXCHASE CONDOMINIUMS, to be known as the FOXCHASE CONDOMINIUMS ASSOCIATION. Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws.

The Board of Directors shall be the governing body of the Association, representing all of the Co-owners in providing for the management, maintenance, repair, replacement, and upkeep of the Property.

15. Maintenance, Repairs and Replacements. Each Owner shall, at his or her expense, be responsible for the maintenance, repairs, decoration and replacement within his or her own Home, except as may otherwise be provided in the Declaration or in the By-Laws or the Rules and Regulations. Each Owner shall repair any defect



occurring in his or her Home which, if not repaired, might adversely affect any Condominium Unit, Common Area, or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished by the Association, pursuant to the terms of the Declaration, the By-Laws and Rules and Regulations.

The Board of Directors shall adopt such Rules and Regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate.

The Association shall have the duty of determining by estimate or otherwise and collecting the amount of common expenses necessary to maintain, repair and administer the FOXCHASE CONDOMINIUMS and all improvements constituting a part thereof, and said duties of the Association shall be more fully set out in the By-Laws and the Rules and Regulations. Annually, on or before the date of the regular annual meeting of the Association, it shall notify the Owner of each Condominium Unit of the amount of the estimated annual assessment and shall collect the fractional interest of one-quarter ( $1/4$ ) of the amount thereof quarterly, commencing on the 1<sup>st</sup> day of January of each year and quarterly thereafter on April 1, July 1 and October 1. The estimated Common Expenses shall be on a calendar year basis. The Association shall maintain and establish a reserve fund for deferred maintenance, repairs, administration costs, payment of a manager, if necessary, payment of insurance premiums and other matters deemed appropriate.

Common Expenses shall be deemed to include, but shall not be limited to the Insurance Premium for all insurable improvements, administration and management

expenses and the cost of maintenance, repair and upkeep of the Common Area. All Owners shall be responsible and liable for a pro rate share of the Common Expenses.

Notwithstanding anything hereinabove or hereinafter set forth, it is expressly provided that the expense of maintenance, repair and upkeep of the Limited Common Areas described and set forth in paragraphs 8(a), (b) and (c) shall be borne exclusively by the Owners of the Homes entitled to the use and enjoyment of such Limited Common Areas as set forth in the Declaration, the By-Laws and the Rules and Regulations of the Association.

The Board of Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency, in which case no notice shall be required), to enter into each individual Home for the purposes of inspection of the Home, the Building in which the Home is located, Common Areas, and Limited Areas appurtenant thereto and for the further purpose of replacement, repair and maintenance, as set forth herein, in the By-Laws or the Rules and Regulations of the Association.

The Board of Directors shall have the sole and exclusive power, authority and obligation to determine all matters affecting assessments, except as may otherwise be provided for in this Declaration and/or the By-Laws. Such power, authority and obligation shall expressly include but shall not be limited to the allocation of all assessments between Homes and Home Owners, the determination of whether property making up any portion of the Project constitutes Common Areas, or Limited Common Areas as provided for in the Declaration and By-Laws, and the determination of whether expenditures with respect to any such property or affecting the same is assessable against all or fewer than all the Owners. Such determinations by the Board

shall be binding upon all parties and all Owners unless it shall be shown that said determinations were made in bad faith with an intent to prefer certain Homes or Owners over others, or were made in contravention of the express terms and conditions of the Declaration and/or the By-Laws.

16. Alterations, Additions, Improvements, Partition. No Owner shall make any alterations or additions to any Building, or to the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alterations to his or her respective Home and within the boundaries thereof which would affect the safety or structural integrity of the Building in which the Home is located. No Owner shall bring any action for partition or division of the Common or Limited Areas. There shall be no judicial partition of the Common or Limited Areas, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition unless the property has been removed from the provisions of the Horizontal Property Act of the State of Indiana, provided, however, that if any Home shall be owned by two or more persons as tenants-in-common, joint tenants, or tenants by the entireties, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, joint tenants or tenants by the entireties, but such partition shall not affect any other Home.

17. Insurance. The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring each Building in the Property in an amount equal to the full replacement cost thereof. Such insurance shall (1) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to paragraph 18; (2) contain a "replacement

cost endorsement"; and (3) provide full coverage for replacement of any Home regardless of what damage, if any, is sustained by any other Home. Such insurance coverage shall be for the benefit of each Owner in accordance with the replacement cost established for each respective Home, and, if applicable, the Owner's Mortgagee. The proceeds shall be payable to the Association or the Board of Directors, who shall hold such proceeds as trustee for the individual Owners and Mortgagees.

The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate, together with workmen's compensation insurance and other liability insurance if deemed necessary or appropriate by the Board of Directors. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors and any Managing Agent or company acting on behalf of the Association. Such insurance coverage shall also cover cross-liability claims of one insured against the other.

The insurance premiums for each Home's insurance shall be charged to and paid by the respective Homes to which they apply individually, and shall constitute obligations exclusive to that Home. The respective Owners may have these insurance premiums paid in whole or in part, directly by the Mortgagee. By acceptance of the deed to any such Home, each and every Owner of such a Home consents to being charged for such insurance premium individually and agrees to pay the same and upon nonpayment shall be subject to enforcement by the Association, which may include the Association placing a lien and subsequently entering a lien against the Home.

Each Owner shall have the right to purchase any additional insurance he or she may deem necessary, and each Owner shall be solely responsible for insurance

on the contents of his or her own Home, including fixtures and improvements installed by the Owner, and his or her personal property stored elsewhere on the Property.

18. Casualty and Restoration. In the event all or any portion of a Home or Homes are destroyed by the occurrence of fire or other casualty, the Association shall cause the Building or the Home or Homes therein to be promptly repaired and restored. The proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the costs of reconstruction of any Home suffering casualty damage, or in the event there are no proceeds, the costs of restoring the damage suffered by any given Home shall be borne by the respective Owner or Owners of such Home to the full extent of the additional costs and expenses of such restoration or reconstruction over and above the insurance proceeds allocable to said Home. If any Owner refuses or fails to make the required repairs necessary to restore any casualty damage, and shall leave his or her Home in a state of disrepair, the other Owners shall (or the Association, if such Owners fail) complete the restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such repairs or restoration at the time required by the Board of Directors shall become a lien on such defaulting Owners' Home and may be foreclosed in the same manner as provided for the lien of Common Expenses.

In the event of complete destruction of all the Buildings containing Condominium Units in the Association, unless by a vote of two-thirds (2/3) of all of the Owners of Homes in the Association a decision is made to rebuild all Homes, insurance proceeds shall be distributed in accordance with the provisions of I.C. 32-1-6-19 which shall be distributed proportionately, according to the fair market value of all the Homes immediately before the casualty.

19. Condemnation.

(a) If all or any part of the property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association and each Owner shall be entitled to participate in the proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all first Mortgagees known to the Association who have an interest in any Home. The expense of participation in such proceedings by the Association shall be borne by the Association. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association and such damages or awards shall be applied as herein provided. In the event an action in eminent domain is brought to condemn a portion of the Common Areas (together with or apart from any Home), the Association in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceedings.

(b) With respect to any such taking, all damages and awards shall be determined for the taking of the individual Homes and for the taking of the Common Areas and for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner for the loss of the individual Home plus an amount in proportion to his or her

Percentage or Fractional Ownership Interest in the Common Areas, unless restoration takes place as herein provided. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore, as far as possible, the Common Areas so taken or damaged. In the event it is determined that such Common Areas should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Plans attached hereto shall be duly amended by instrument executed by the Association on behalf of the Owners. In the event such eminent domain proceedings results in the taking of or damage to one or more but less than two-thirds (2/3) of the total number of Homes, then the damages and awards for such taking shall be determined for each Home and the following shall apply:

- (1) The Association shall determine which of the Homes damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of this Project and the reduced size of each Home so affected.
- (2) The Association shall determine whether it is reasonably practicable to operate the remaining Homes of the Project, including those affected Homes which may be made tenantable, as a condominium in the manner provided in this Declaration.
- (3) Subject to the provisions of I.C. 32-1-6-28, should the Association determine that it is not reasonably practicable to operate the unaffected Homes and the affected Homes

which can be made tenantable, then the Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Owners, as tenants in common, with respect to the Common Areas, in the proportionate ownership interest previously owned by each Owner in the Common Areas. Any decision to terminate the condominium status of the Project must have the approval of first Mortgagees holding the mortgages on Homes possessing at least fifty-one percent (51%) of the votes in the Association.

- (4) In the event the Association determines it will be reasonably practicable to operate the unaffected Homes and the affected Homes which can be made tenantable as a condominium, then the damages and awards made with respect to each Home which may be made tenantable shall be applied to repair and to reconstruct such Home so that it is made tenantable. The restoration shall be performed in accordance with this Declaration and the original Plans and Specifications, unless other action is approved by the Owners or if a mortgage exists against the Homes, then by holders of mortgages on Homes, where such approval is at least 51% of the votes in the Association.

20. Protection of Mortgagee.



(a) Notice to Association. An Owner who mortgages his or her Home shall notify the Association, or the insurance agent or company for the Association, giving the name and address of his or her Mortgagee.

(b) Examination of Books. The Association shall permit a Mortgagee to examine the books and records of the Association upon request.

(c) Management Agreements. Any management agreement and/or service contract entered into by the Association will be terminable by the Association without cause and without payment of a termination fee upon ninety (90) days or less written notice and the term of such management agreement will not exceed the period of three (3) years.

(d) Taxes, Assessments and Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominium Homes and not to the Condominium Project as a whole.

21. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Homes are set forth in Article VI of the By-Laws, the Declaration and the Rules and Regulations of the Association. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners, and shall run with the land and inure to the benefit of and be enforceable by any Owners, the Co-owners or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof.

22. Amendment of Declaration. Amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or the Owners of at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the Percentage Vote.

(e) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association, and shall be recorded in the Office of the Recorder of Allen County, Indiana, and such amendment shall not become effective until so recorded.

23. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Homes shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the Rules and Regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Home shall constitute an agreement that the provisions of this Declaration, the By-Laws and any Rules and Regulations adopted pursuant thereto, as each may be amended from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person

having at any time any interest or estate in a Home or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporation, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Home or Homes or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the Rules and Regulations applicable thereto as each may be amended from time to time.

24. Negligence. Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his or her negligence or by that of any member of his or her family or his or her guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association.

25. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Act, the By-Laws, or the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

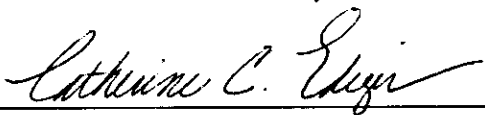
26. Waiver. No Owner may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his or her Home.

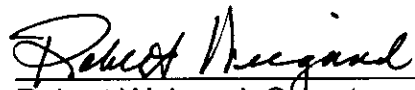
27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the By-Laws or the Rules and Regulations of the Association.

The undersigned President and Secretary of Foxchase Condominiums Association do hereby certify that the Declaration of Horizontal Property Ownership, Foxchase Condominiums, Horizontal Property Regime, as originally recorded in Plat Book 6 at pages 73-90 in the records of the Office of the Recorder of Allen County, Indiana, on December 7, 1988, has been amended by action of this Association at a duly called and held meeting on the 12<sup>th</sup> day of November, 2001, at which more than seventy-five percent (75%) of the Owners were present in person and by proxy and did then and there adopt resolutions amending the aforesaid Declaration of Horizontal Property Ownership with such amendments being fully incorporated herein, approved by more than seventy-five percent (75%) of the Owners of homes in Foxchase Condominiums, Inc.

IN WITNESS WHEREOF, we have hereunto executed this document by subscribing our names as the duly elected president and secretary of Foxchase Condominiums Association and of its successor incorporated entity, Foxchase Condominiums, Inc.

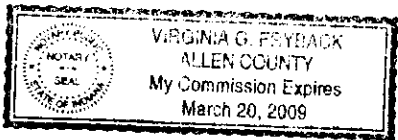
Dated as of this 11<sup>th</sup> day of February, 2002.

  
 Catherine C. Ediger, President  
 Foxchase Condominiums Association

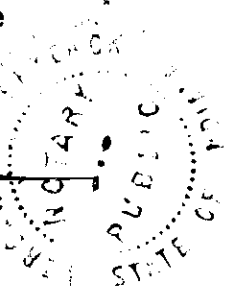
  
 Robert Weigand, Secretary  
 Foxchase Condominiums Association

State of Indiana       )  
                                  ) SS:  
County of Allen        )

I, a notary public, in the aforesaid county and state, do on this 11th day of February, 2002, acknowledge that the above-named, Catherine C. Ediger, as President of Foxchase Condominiums Association, acknowledge the execution of the foregoing document of Amended Declaration of Horizontal Property Ownership of Foxchase Condominiums, Inc. Horizontal property Regime, as her voluntary act and deed.



Virginia G. Fryback  
Virginia G. Fryback, Notary Public  
Resident of Allen County, Indiana



My Commission Expires:  
March 20, 2009

State of Indiana       )  
                                  ) SS:  
County of Allen        )

I, a notary public, in the aforesaid county and state, do on this 21st day of February, 2002, acknowledge that the above-named, Robert Weigand, as Secretary of Foxchase Condominiums Association, acknowledge the execution of the foregoing document of Amended Declaration of Horizontal Property Ownership of Foxchase Condominiums, Inc. Horizontal property Regime, as his voluntary act and deed.

Sandra L. Fleury-Bryt  
SANDRA L. FLEURY-BRYT, Notary Public  
Resident of Allen County, Indiana

My Commission Expires:  
6-22-08



**EACH HOME'S PERCENTAGE INTEREST  
PER PHASE OF CONSTRUCTION O FRACTION THEREOF**

Home Address	Percentage Interest	Home Address	Percentage Interest
2002 Foxchase Run	2.17%	3006 Foxchase Run	2.17%
2016 Foxchase Run	2.17%	3018 Foxchase Run	2.17%
2030 Foxchase Run	2.17%	3030 Foxchase Run	2.17%
2320 Foxchase Run	2.17%	3025 Foxchase Run	2.17%
2406 Foxchase Run	2.17%	3017 Foxchase Run	2.17%
2414 Foxchase Run	2.17%	3009 Foxchase Run	2.17%
2424 Foxchase Run	2.17%	3001 Foxchase Run	2.17%
2430 Foxchase Run	2.17%	2931 Foxchase Run	2.17%
2514 Foxchase Run	2.17%	2919 Foxchase Run	2.17%
2522 Foxchase Run	2.17%	2907 Foxchase Run	2.17%
2530 Foxchase Run	2.17%	2829 Foxchase Run	2.17%
2536 Foxchase Run	2.17%	2817 Foxchase Run	2.17%
2606 Foxchase Run	2.17%	2805 Foxchase Run	2.17%
2610 Foxchase Run	2.17%	2727 Foxchase Run	2.17%
2616 Foxchase Run	2.17%	2721 Foxchase Run	2.17%
2601 Foxchase Run	2.17%	2715 Foxchase Run	2.17%
2415 Foxchase Run	2.17%	2709 Foxchase Run	2.17%
2405 Foxchase Run	2.17%	2703 Foxchase Run	2.17%
2333 Foxchase Run	2.17%	2633 Foxchase Run	2.17%
2301 Foxchase Run	2.17%	2929 Foxchase Run	2.17%
2235 Foxchase Run	2.17%	2625 Foxchase Run	2.17%
2225 Foxchase Run	2.17%	2621 Foxchase Run	2.17%
2624 Foxchase Run	2.17%	2617 Foxchase Run	2.17%

During Phase II, or any fraction thereof of construction and sale of Homes therein of FOXCHASE CONDOMINIUMS, EACH Home's percentage interest in Phase I and Phase II shall be 2.04%.

**EXHIBIT B**

1983 DEC 7 AM 10-21

Book 6 Page 24

ALLEN COUNTY RECORDER

*Raymond L. Young*

83-028119

## LEGAL DESCRIPTION

A part of Richardsville Reserve in Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows: Commencing at the Southwest corner of Richardsville Reserve in Township 31 North, Range 13 East; thence North 26 degrees 00 minutes 00 seconds East along the West line of said Reserve a distance of 3,224 feet to the point of beginning; thence continuing North 26 degrees 00 minutes 00 seconds East along the aforesaid Reserve line a distance of 485.52 feet; thence South 88 degrees 46 minutes 13 seconds East a distance of 1,690.66 feet; thence South 89 degrees 21 minutes 51 seconds East a distance of 562.18 feet; thence South 32 degrees 30 minutes 10 seconds West a distance of 197.05 feet; thence South 57 degrees 29 minutes 50 seconds East a distance of 100.00 feet; thence South 32 degrees 30 minutes 10 seconds West a distance of 249.14 feet; thence North 89 degrees 06 minutes 17 seconds West a distance of 2,310.00 feet to the point of beginning containing 22.80 acres more or less.

