

Cross Reference: Instrument No. 90011483, Book 62, Page 808
Instrument No. 90010337, Plat Book C, Page 466 A, B, & C
Instrument No. 94008462, Plat Book C, Page 620 A & B
Instrument No. 90014727, Book 62, Page 982
Instrument No. 2005-024259
Instrument No. 2005-030682
Instrument No. 2012-015948

**FIFTH AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF FOXMOOR**

This Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions of Foxmoor ("Declaration") was made as of the date set forth below by the Foxmoor Homeowners' Association, Inc.

WITNESSETH:

WHEREAS, the Foxmoor subdivision located in Johnson County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions of Foxmoor" which was recorded on August 31, 1990, as Instrument No. 90011483, Book 62, Page 808 in the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, the Plat for Foxmoor Section I, was recorded with the Office of the Recorder of Johnson County, Indiana, on August 6, 1990, as Instrument No. 90010337, also in Plat Book C, Page 466 A, B, & C; and the Plat for Foxmoor Section II, was recorded with the Office of the Recorder of Johnson County, Indiana, on April 11, 1994, as Instrument No. 94008462, also in Plat Book C, Page 620 A & B; and

WHEREAS, the "Declaration" was subsequently amended in the "First Amendment to Declaration of Covenants, Conditions, and Restrictions of Foxmoor" which was recorded on, November 13, 1990, as Instrument No. 90014727, Book 62, Page 982 in the Office of the Recorder of Johnson County, Indiana; and amended by the "Second Amendment to Declaration of Covenants, Conditions, and Restrictions of Foxmoor" recorded on September 6, 2005, as Instrument No. 2005-024259; and amended by the "Third Amendment to Declaration of

Covenants, Conditions, and Restrictions of Foxmoor” recorded on October 31, 2005, as Instrument No. 2005-030682; and amended by the “Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions of Foxmoor” recorded on July 15, 2012, as Instrument No. 2012-015948 in the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, the original developer of Foxmoor provided for the preservation of the values and amenities in said community and for the maintenance of said Common Areas; and, to this end, subjected the Foxmoor real property to the Declaration and the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which was, is and are for the benefit of said property and each owner thereof; and

WHEREAS, the original developer of Foxmoor deemed it desirable, for the efficient preservation of the values and amenities in said community, to create Foxmoor Homeowners’ Association, Inc., an Indiana nonprofit corporation (hereafter, “Association”), to which was delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges as described in the Declaration; and

WHEREAS, Article XI, Section 11.1 of the Declaration states that its covenants, conditions and restrictions may be amended or changed, in whole or in part, at any time upon approval by a majority of all Owners; and

WHEREAS, a written ballot pursuant to Indiana Code 23-17-10-8 was sent to all owners of record for the purpose of the Association's members to approve the following Fifth Amendment to the Declaration; and

WHEREAS, 53.9% of the Lots (48 out of 89 Lots) voted to approve this Amendment pursuant to the terms below.

NOW, THEREFORE, the Owners of Foxmoor hereby amend the Declaration such that all of the platted dwellings, Lots, Common Areas and lands located within Foxmoor as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said homes, Lots, Common Areas and lands in Foxmoor. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said homes and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions and shall inure to the benefit of all successors

in title to any real estate in the development. Now, therefore, the Declaration which is applicable to all Owners and residents within Foxmoor is hereby amended as follows:

The following new Article XIII, is added to the Declaration:

ARTICLE XIII
ADULT COMMUNITY DWELLING RESTRICTION

It is the intent of the Association's members to have the Association qualify as an exempt adult Dwelling under the Housing for Older Persons Act of 1995 ("HOPA"). To qualify as exempt under the statute, a minimum of eighty percent (80%) of the households must have at least one owner in residence that is age fifty-five (55) or older. At the time this amendment is recorded, any household that does not meet this criteria, shall be grandfathered, however, they must still comply with the age verification procedures as adopted by the Board.

Accordingly, the Owners covenant and agree to restrict the sale of their Lots to households having at least one (1) occupant who is at least fifty-five (55) years of age or older at the time of the sale. Any Lot that does not have at least one owner in residence who is fifty-five (55) years or older must receive prior written approval for such occupancy by the Board (who shall act in accordance with maintaining the eighty percent (80%) requirement to prevent the community from losing its HOPA exemption.) Such approval will be granted only for hardship circumstances involving care of a dependent, or for any owner that is grandfathered under the terms of this amendment. All Owners and prospective purchasers of a Lot shall provide documentation regarding the age of the Owner(s) or Residents of a particular Lot upon request by the Board. All Owners and residents must comply with the age requirement of this section.

In the event of death, divorce, or other physical limitation of an Owner, and the remaining Owner is under the age of fifty-five (55), the remaining Owner must file a written notice with the Association within thirty (30) days. The Board will review the notice and provide acknowledgement to the notice. This written notice must be re-submitted by the Owner and acknowledged by the Board on a yearly basis until the remaining Owner reaches the age of fifty-five (55).

All Owners agree to be bound by this restriction and shall be subject to the same penalties as other breaches of any other covenant, condition, restriction or By-Law. The Owners also agree to comply with all necessary verification policies that occur every two years as adopted by the Board of Directors to ensure that Foxmoor remains compliant with all terms and conditions of HOPA for age verification.

Except as amended above, all other provisions of the Declaration remain in full force and effect.

Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration, and

all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or Foxmoor as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the above Fifth Amendment have been fulfilled and satisfied.

Executed this 2th day of May, 2022.

Foxmoor Homeowners' Association, Inc., by:

Margaret M. Miller
Margaret M. Miller, President

Attest:

Linda B. Libs
Linda B. Libs, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Marion)



Before me, a notary public, in and for said County and State, personally appeared Margaret M. Miller and Linda B. Libs, the President and Secretary, respectively, of Foxmoor Homeowners' Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the certifications and representations made therein are true. Witness my hand and notarial seal this 2th day of May, 2022.

Marcel E. Faenzi
Notary Public - Signature

Marcel E. Faenzi
Printed

My Commission Expires:
8/13/2025

Residence County: Marion

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." Kimberly M. Sutter, Esq.

This instrument prepared by, and should be returned to, Kimberly M. Sutter, EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216. (317) 536-2565.