



Cross References: Inst. No. 200400007080
Inst. No. 200500010834
Inst. No. 200500019358
Inst. No. 200916547
Inst. No. 201107333
Inst. No. 201802847
Inst. No. 201903105

**SIXTH AMENDMENT TO THE DECLARATION OF COVENANTS
AND RESTRICTIONS OF BERSOT CROSSING**

This Sixth Amendment to the Declaration of Covenants and Restrictions of Bersot Crossing was executed as of the date set forth below.

W I T N E S S E T H that the following facts are true:

The Bersot Crossing subdivision located in Hendricks County, Indiana was established by a "Declaration of Covenants and Restrictions" (the "Declaration") that was filed in the Office of the Recorder of Hendricks County, Indiana on March 8, 2004, as Instrument No. 20040007080; and

Plats filed with the Office of the Recorder of Hendricks County, Indiana established the Lots and Common Areas comprising said subdivision; and

A Supplemental Declaration of Covenants and Conditions of Bersot Crossing Property Ownership was filed in the Office of the Recorder of Hendricks County, Indiana April 14, 2005, as Instrument No. 200500010834; and

The Declaration was amended by the "First Amendment to Declaration of Covenants and Restrictions Bersot Crossing Property Ownership", which was filed in the Office of the Recorder of Hendricks County, Indiana, on July 5, 2005, as Instrument No. 200500019358; and

The Declaration was further amended by the "Second Amendment to the Declaration of Covenants and Restrictions of Bersot Crossing Property Ownership", which was filed in the

Office of the Recorder of Hendricks County, Indiana, on June 12, 2009 as Instrument No. 200916547 ; and

The Declaration was further amended by the "Third Amendment to the Declaration of Covenants and Restrictions of Bersot Crossing Property Ownership", which was filed in the Office of the Recorder of Hendricks County, Indiana, on March 30, 2011 as Instrument No. 201107333 ; and

The Declaration was further amended by the "Third [sic] Amendment to the Declaration of Covenants and Restrictions of Bersot Crossing Property Ownership", which was filed in the Office of the Recorder of Hendricks County, Indiana, on January 28, 2018 as Instrument No. 201802847; and

The Declaration was further amended by the "Fifth Amendment to the Declaration of Covenants and Restrictions of Bersot Crossing Property Ownership", which was filed in the Office of the Recorder of Hendricks County, Indiana, on February 14, 2019 as Instrument No. 201903105; and

Section 20 of the Declaration allows for the amendment of the Declaration upon the approval of no less than seventy-five percent (75%) of all Owners in attendance in person or by proxy at a regular or specially called meeting with a proper quorum; and

The Board of Directors of Bersot Crossing Homeowners Association, Inc. ("Association") recommended that the Declaration of Covenants be further amended as set forth below; and

After notice was duly given, a Special Meeting of the members of the Association was held on December 17, 2019, for the stated purpose of considering and voting upon this amendment; and

At said meeting, no less than seventy-five percent (75%) of the owners present in person or by proxy voted in favor of amending the Declaration pursuant to the terms below:

NOW, THEREFORE the Declaration which is applicable to all Owners and residents within Bersot Crossing is hereby amended as follows:

1. A new Section 30 shall be added to the end of the Declaration to read as follows:

Section 30. Leasing Restrictions: The Corporation's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner occupants maintain their property better than renters generally. The Corporation's members wish to insure that the residents within Bersot Crossing share the same proprietary interest in and respect of the Dwelling Units and the Common Areas, and to encourage residents to not only maintain property values but also to improve them by recognizing that owner occupants have more incentive to do so compared to non-owner occupants. Thus, the provisions of this Section 30 shall be applicable.

(a). Limits on the Number of Leased Units ("Rental Cap"). No more than ten (10) Dwelling Units within Bersot Crossing may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Section 30. The Units described in subsection (b) below shall count towards the ten (10) Unit "rental cap". If at any time such number of Dwelling Units are leased or rented, an Owner who wants to rent or lease his or her Unit which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Unit shall immediately notify the Board of Directors of such fact and shall have up to ninety (90) days from the date on which the existing tenant moves out to enter in a new lease with another tenant, and to provide a copy of such lease to the Board of Directors. If the Owner does not enter into a new lease within that time, then the Dwelling Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Dwelling Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors as to that Owner's intent to lease his or her Dwelling Unit. After receiving such notice, the Board shall advise the Owner if his or her Unit may be leased or whether the maximum number of Dwelling Units within Bersot Crossing is currently being leased. If the maximum number of Dwelling Units is being leased, the Board of Directors shall also notify the Owner of that Owner's position on the waiting list.

(b). Effective Date of "Rental Cap" on Existing Rentals. Within fifteen (15) days after the date on which this Amendment is recorded in the Office of the Recorder of Hendricks County (the "Recording Date"), the Board of Directors shall provide written notice to all Owners setting forth the Recording Date. The Rental Cap provisions of subsection (a) shall not apply to the Owner of any Dwelling Unit in Bersot Crossing which, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord's Unit (or Units) which is in effect as of the Recording Date. Those Dwelling Units will be referred to as "Grandfathered Units." Such lease copies may have the rental amount deleted, together with any personal identifying information such as social security numbers. The Owners of Grandfathered Units shall not be subject to the provisions of subsection(a) but shall be subject to the remaining provisions of this Section 30. However, when the legal owners of record of any Grandfathered Unit sells, transfers or conveys such Unit(s) to another Owner after the Recording Date, such Unit(s) shall immediately become subject to the Rental Cap.

If any such Owner-landlord of a leased or rented Dwelling Unit fails to deliver a copy of such pre-Recording Date lease within said sixty-day period to the Board of Directors, that will result in said Owner-landlord's Dwelling Unit being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Cap apply to any lease executed prior to the Recording Date or to any renewals thereof provided for in any such leases, so long as the Dwelling Unit continues to be occupied by one or more of the non-Owner occupants in possession of the Dwelling Unit as of the Recording Date. Any Dwelling Unit that falls under the exception of this Subsection (b) shall, nevertheless, be counted as one of the ten (10) Dwelling Units that may be rented at any given time, even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Dwelling Unit.

(c). Hardship Exceptions and Waiver. Notwithstanding subsection (a) above, if an Owner wishes to rent or lease his or her Dwelling Unit, but the maximum number of Units is currently being leased, the Owner may request the Board of Directors to waive the "Rental Cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "Rental Cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Dwelling Unit, subject to any further conditions or limitations imposed by the Board, in the Board's discretion, but only if the Owner satisfies all other requirements of this Section 30. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;
- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Bersot Crossing due to a change of employment or retirement of at least one (1) of such Owners;
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (5) difficult real estate market conditions;
- (6) other similar circumstances.

(d) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. However, in no event will an Owner be permitted to rent his or her Dwelling Unit for an initial term of thirty (30) days or less. No portion of any Dwelling Unit other than the entire Dwelling Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Corporation; and shall provide for direct action by the Corporation and/or any Owner against the tenant with or without joinder of the Owner of such Dwelling Unit. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. The Owner cannot be delinquent in the payment of any assessments or other charges to the Corporation. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Dwelling Unit, even if during the term of a lease. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors or its managing agent with the Owner's contact information such as address, phone number and email. To be eligible to lease his or her Lot, the Owner cannot be in violation of any provisions of this Declaration, the By-

Laws, or the rules and regulations adopted by the Board, all as amended. If at any time an Owner violates any such provisions through the actions or omissions of the Owner's tenant, the Board shall have the right to revoke said Owner's right to lease the Owner's Dwelling Unit, even if during the term of a lease.

(e). Five Year Waiting Period. In addition to all other provisions of this Section 30, for a period of at least five (5) years after an Owner's acquisition of a Dwelling Unit, said Owner cannot lease such Unit. After such time, said Unit will be eligible to be leased if all other conditions of this Section 30 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Corporation. Notwithstanding this Subsection (e), if an Owner wishes to lease a Unit prior to the end of the five-year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Subsection (c) above. If a Dwelling Unit enjoys status as a "Grandfathered Unit" as described in Subsection (b) then the five (5) year waiting period will not apply for as long as the Unit is considered to be a "Grandfathered Unit."

(f). Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Corporation and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Corporation for payments of assessments or any other charges.

(g). Corporation's Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as any personal identifying information) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

(h). Violations. Any lease or attempted lease of a Dwelling Unit in violation of the provisions of this Section 30 shall be voidable at the election of the Corporation's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Section 30 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Corporation, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

(i). Institutional Mortgagees. The provisions set forth in this Section 30 shall not apply to any institutional mortgagee of any Dwelling Unit which comes into possession of the Dwelling Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Dwelling Unit is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Section 30.

(j). Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Dwelling Unit is not occupied by one of the Owners thereof, there shall be a presumption that the Dwelling Unit is being leased and subject to the provisions of this Section 30 and the Owners

shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 30, including but not limited to the delivery to the Board of directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 30 and this Subsection (j), any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Dwelling Unit.

(k). Certain Dwelling Units Not Counted as Rentals. The provisions of this Section 30 will not apply to any situation where a Dwelling Unit is occupied by one or more family members of the Unit Owner. Thus, this kind of occupancy will not be considered a "rental". Likewise, any Dwelling Unit owned by a Trust or an Estate will not be considered a "rental" if the resident is (i) the Trustee, (ii) the Fiduciary of an Estate, or (iii) a beneficiary of the Trust or Estate.

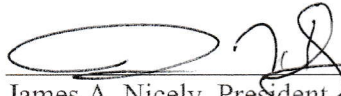
2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration and all prior amendments, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or the Bersot Crossing subdivision as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to this Sixth Amendment of the Declaration have been fulfilled and satisfied.

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Executed this 2 day of January, 2020.

Bersot Crossing Homeowners Association, Inc., by:



James A. Nicely, President

Attest:


Steve Marusich, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Hendricks

Before me, a notary public, in and for said County and State, personally appeared James A. Nicely and Steve Marusich, the President and Secretary, respectively, of Bersot Crossing 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 representations made herein are true. Witness my hand and notarial seal this 2 day of January, 2020.


Notary Public - Signature

Steven A. Baum
Printed

My Commission Expires:
02/24/2023

Residence County: Hendricks

"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." /s/ P. Thomas Murray, Jr.

This instrument prepared by, and should be returned to:
P. Thomas Murray, Jr.
Eads Murray & Pugh, P.C.
9515 E. 59th St., Ste. B
Indianapolis, IN 46216
Tom@IndianaHOALaw.com

Steven A. Baum
Notary Public
Seal
Hendricks County, State of Indiana
My Commission Expires: 02/24/23
Commission No. 664533