

**PROPOSED AMENDMENT TO ADD LEASING RESTRICTIONS  
FOR SWEET BRIAR**

Our Board of Directors of the Sweet Briar Property Owners Association, Inc. (“Association”) recommends that our homeowners approve amendments to our Declaration of Restrictions. The proposed amendment below would add rental restrictions and add streamlined methods for amending the Declaration. Under the terms of our original Declaration from 1995 there are no such leasing restrictions and technology has changed and therefore we propose to update or methods for amending the Declaration. Regarding leasing, to the best of our Board’s knowledge, about 24 of our 240 homes are rentals right now, which is a 10%. We are concerned that the number of rentals will rise if we don’t do anything.

Our Association will hold a “town hall meeting” on [date], 2022, at [time] at [location] **OR BY ZOOM?** to discuss the amendment, answer your questions, and seek your input. At that meeting, there will NOT be any formal vote. Rather, it will be for discussion purposes only.

Right now, for any amendment to our Declaration to be adopted, the owners of at least 75% of our homes must give their approval. Since we have 240 homes, that means that the owners of at least 180 homes must approve the amendments that we are recommending below. After the town hall meeting, if there seems to be a general consensus that the amendment would pass, we will present it for a formal vote.

**AMENDMENT #1: LEASING RESTRICTIONS:**

Our Board proposes that a new Paragraph 18 (including Sections 18(A) through 18(M) be added to the end of the Declaration of Covenants to read as follows:

**18. LEASING RESTRICTIONS.**

A. General Purposes of Leasing Restrictions. The Association’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 Association’s members wish to ensure that the residents within Sweet Briar share the same proprietary interest in and respect of the Lots and the common areas. They also want to encourage residents to not only maintain property values but also to improve them and recognize that owner occupants have more incentive to do so compared to non-Owner occupants. Thus, the provisions of this Paragraph 18 shall be applicable.

B. Limits on the Number of Leased Lots (“Rental Cap”). No more than twenty-four (24) of the Lots (which is 10%) may be leased or rented to non-Owner occupants at any given time, except

as may be otherwise provided in this Paragraph 18. The “Grandfathered Lots” defined and described in Section 18(C) below shall count towards the twenty-four (24) Lot “Rental Cap”. If at any time such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot 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 Lot shall immediately notify the Board of Directors or Managing Agent of such fact and shall have thirty (30) days from the date on which the existing tenant moves out to enter into a new lease agreement with another tenant, and to provide a copy of such lease to the Board of Directors or Managing Agent. If the Owner does not enter into a new lease agreement and provide a copy of such lease to the Board or Managing Agent within thirty (30) days, then the Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner’s intent to lease his or her Lot. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if the Lot may be leased or whether the maximum number of Lots within Sweet Briar is currently being leased. If the maximum number of Lots is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner’s position on the waiting list.

C. Effective Date of “Rental Cap” on Existing Rentals. Within thirty (30) days after the date on which this Paragraph 18 is recorded in the Office of the Recorder of Hamilton County (the “Recording Date”), the Board of Directors or Managing Agent shall provide written notice to all Owners setting forth the Recording Date and the mailing address of the Association. The provisions of Section (B) (the “Rental Cap”) shall not apply to the Owner of any Lot in Sweet Briar 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 of Directors of the Association (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 Lot (or Lots) which is in effect as of the Recording Date. Such Lots shall be referred to as “Grandfathered Lots.” Such lease copies may have the rental amount deleted as well as any personal identifying information such as social security numbers. The Owners of such Grandfathered Lots shall not be subject to the provisions of Section (B), but shall be subject to the remaining provisions of this Paragraph 18. However, when the legal Owners of record of any of the Grandfathered Lots sell, transfer, or convey such Lot(s) to another Owner after the date of recording of this Paragraph 18, such Lot(s) shall immediately become subject to the Rental Cap.

If any such Owner-landlord of a leased or rented Lot 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 Lot 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 Lot continues to be occupied by one or more of the non-Owner occupants in possession of the Lot as of the Recording Date. Any Lot that falls under the exception of this Section (C) shall, nevertheless, be counted as one of the thirty (30) Lots 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 Lot.

D. Hardship Exceptions and Waiver. Notwithstanding anything else herein, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots 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 the Owner’s request in writing, the Board of Directors shall permit the Owner to rent or lease said Lot, 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 Paragraph 18. 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) relocation of the Owner due to military status;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Sweet Briar 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) other similar circumstances.

E. General Lease Conditions.

- (1) 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. Owners may not lease, rent, or otherwise operate their home and Lot on a hotel, transient or short-term rental basis. For the purpose of this Section (E), “short-term rental” is defined as any term of less than one (1) year. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a home and Lot or portion thereof to an occupant and collects consideration for the rental from the occupant (for example, Airbnb or VRBO).
- (2) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as personal identifying information) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.

- (3) No portion of any Lot other than the entire Lot shall be leased for any period. No subleasing shall be permitted.
- (4) All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, as amended (collectively referred to hereafter as the “Governing Documents”), to the same extent as if the tenant were an Owner and a member of the Association.
- (5) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
- (6) The Owner shall supply copies of the Governing Documents to the tenants prior to the effective date of the lease.
- (7) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. 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 Lot, even if during the term of a lease.
- (8) Owners must provide the Board of Directors or Managing Agent with the name of the tenant(s) and any other residents living in the Lot, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors or Managing Agent with the Owner’s contact information such as address and phone number.
- (9) To be eligible to lease his or her Lot, the Owner cannot be in violation of any provisions of the Governing Documents. 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 Lot, even if during the term of a lease.

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 Association and the other Owners for compliance with the provisions of the Governing Documents, or from the Owner’s liability to the Association for payments of assessments or any other charges.

G. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Paragraph 18 shall be voidable at the election of the Association’s Board of Directors or any other Owner, except that neither party to such lease may assert this provision to avoid its obligations thereunder. In the event of a violation, the Board, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity, including the right to recover from the violating Owner all attorneys fees, costs and expenses.

H. Institutional Mortgagees. The provisions of this Paragraph 19 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot 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 Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser or Owner shall be bound by the provisions of this Paragraph 18.

I. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Paragraph 18 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 Paragraph 18, 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 Paragraph 18 and this Section (I), 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 Lot. If the Owner is selling his or her Lot via land contract, contract for deed, or similar agreement, the contract or memorandum thereof must be recorded with the County Recorder to be deemed valid. Failure to record the contract or memorandum thereof will automatically deem the document to be a lease for purposes of this Declaration.

J. Two Year Waiting Period; Hardship Exceptions and Waiver. For a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease or rent such Lot. After such time, said Lot will be eligible to be leased if the Rental Cap has not been reached and all other conditions of this Paragraph 18 are satisfied, and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section (J), if an Owner wishes to lease a Lot prior to the end of the two-year waiting period, the Owner may apply to the Board of Directors for a hardship exception and waiver as described in Section (D) above.

K. Maximum Number of Lots Owned by a Single Owner. In order to encourage Sweet Briar remains a community where the Owners reside on the property:

- (1) Except as provided in Section (K)(2), no Owner, either individually or through an Affiliate, may own more than four (4) Lots within Sweet Briar at any time. For the purposes of this Section (K), an "Affiliate" of an Owner means any person who controls, is controlled by, or is under common control with an Owner.

- a. A person “controls” a Unit Owner if the person
  - i. is a general partner, officer, director, or employer of the Unit Owner;
  - ii. directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the Unit Owner;
  - iii. controls in any manner the election of a majority of the directors of the Unit Owner; or
  - iv. has contributed more than twenty per cent of the capital of the Unit Owner.
- b. A person “is controlled by” a Unit Owner if the Unit Owner
  - i. is a general partner, officer, director, or employer of the person;
  - ii. directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person;
  - iii. controls in any manner the election of a majority of the directors of the person; or
  - iv. has contributed more than twenty percent of the capital of the person.
- c. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

- (2) The limitation contained in Subsection (1) shall not apply to:
  - a. Any Unit Owner that as of [GRANDFATHERING DATE], owns, either individually or through an Affiliate, more than four Units, nor to those Units that he or she owns as of [GRANDFATHERING DATE]. However, any such Unit Owner is hereby prohibited from acquiring ownership of any additional Units, either individually or through an Affiliate, on or after [GRANDFATHERING DATE]; or
  - b. The holder of a first or second Security Interest in a Unit who acquires title to the Unit by foreclosure of its Security Interest, by deed in lieu of foreclosure, or by redemption of the Unit in an action to foreclose the Association's lien for assessments.

This restriction shall not apply to any Owner who owns more than two (2) Lots which were purchased or with respect to which there was a binding purchase agreement prior to the recording of this restriction.

Any purchase agreement, conveyance or lease or rental agreement executed subsequent to the recording of this restriction which violates any provision of this Section (K) shall be voidable at the election of the Association's Board of Directors or any Sweet Briar Owner, except that neither party to such agreement, conveyance or lease may assert this provision of this Paragraph 18 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Sweet Briar Owner, shall have the right to exercise any and all available remedies at law or equity.

M. Certain Lots Not Counted as Rentals. The provisions of this Paragraph 18 will not apply to any situation where a Lot is occupied by one or more family members of the Lot Owner (persons related by blood, marriage, adoption, foster care, or guardianship). Thus, this kind of occupancy will not be considered a "rental." Likewise, any Lot 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.

## **AMENDMENT #2: AMENDING THE DECLARATION**

**Our Board proposes that a new Paragraph 19 be added to the end of the Declaration of Covenants to read as follows**

**19. Amendments.** This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots who are in good standing. For purposes of this provision, "good standing" shall mean Owners who are no more than six (6) months delinquent on the payment of any Assessments, or any installments thereof, as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

- (a) at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as amended, including, but not limited to, written mail-in ballots; or
- (d) pursuant to any procedure adopted by the Board with regard to a secure, internet-based online voting system ("electronic voting") voting; or
- (e) any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that the Owners of a majority of the Lots who are in good standing approved such amendment. Thereafter, the amendment shall be filed with the County Recorder.