

## Guidance for Landlords in the Fairways of Sherrill Park February 2019

As you are aware, our Subdivision is a “deed restricted” community. All Owners are subject to the terms of our Dedicatory Instruments.

The Third Amended and Restated Declaration of Covenants, Easements, and Restrictions for the Fairways of Sherrill Park (the “Third Amended Declaration” or “Declaration”) was approved by the Homeowners Association (“HOA”) membership in November 2015. It became effective as of November 19, 2015, and was filed of record in the Collin County real estate records on November 23, 2015. A full copy is available at our HOA website at <http://www.sherrillpark.com/NEWForms.html>. Capitalized terms used in this guidance, and not otherwise defined herein, have the same meaning as the corresponding defined terms in the Declaration.

The new Declaration has a number of changes that relate specifically to Owners who choose to Lease the Lots and Residences they own in the Subdivision. The purpose of this guidance is to highlight those terms so that you may Lease your property in compliance with the Declaration. Any conflict between this summary guidance and the actual Declaration shall be governed by the Declaration.

### 3.1 Use Restrictions.

**(a) Residential, Single Household Uses Permitted.** Each Lot within the Subdivision shall be used exclusively for “single Household” residential purposes. The term “single Household” shall refer not only to the architectural design of the Residence but also to the number and character of permitted inhabitants, which shall be limited to one Household. In no case may a Lot contain more than one Residence, and in no case may one Residence be occupied by more than one single Household. The Lease of a Lot is permitted under specific circumstances, as further outlined elsewhere in the Declaration and any other applicable provisions of any other Dedicatory Instrument.

**(b) Non-Permitted Uses.** The following uses are not permitted within the Subdivision:

*I.* Any Permitted Business Use that causes increased parking or traffic within the Subdivision;

*II.* Conducting, performing, or engaging in any Business or Trade that is not permissible as a Permitted Business Use. However, the Lease of a Lot shall not be considered prohibited Business or Trade unless any of the following collectively Lease more than one Lot at any time: (i) an Owner; (ii) such Owner’s Household; or (iii) any Person related to such Owner for the purposes of business involving real property. Garage sales, attic sales, estate sales, moving sales, or yard sales (or any similar vending of merchandise) conducted on any Lot more than

twice per year shall be considered business activity and are therefore prohibited.

III. The raising of livestock, domestic or wild animals, or plants or crops on any Lot, or any portion of the Subdivision, for the purpose of breeding or selling the same, whether for profit or not.

IV. Use of the Lot or Residence for non-residential activities or purposes, whether for profit or not, including without limitation transient housing, transitional housing, Halfway Houses, Rehabilitation Care Facilities, hotels, motels, event or party venues, tourist homes or houses, lodging houses, inns, rooming houses, bed and breakfasts, and/or vacation rentals, unless such use is required to be permitted by state or federal law.

V. Lease of a Lot, any improvements located thereon, or any appurtenances if such Lease does not fully comply with all terms of this Declaration and any applicable provisions of any other Dedicatory Instrument.

**(c) Clarification of Scope of Permitted Commercial Activity.** The Association may, but is not required to, adopt rules and regulations regarding non-permitted commercial activity and may also promulgate rules to further clarify and supplement the scope of permitted commercial activities within the Subdivision.

**(d) Intent.** It is not the intent of this provision to exclude from this Subdivision any individual who is entitled to occupy the Subdivision or any part thereof by virtue of any state or federal law. If it is found that any use or occupancy provision contained in the Declaratory Instruments is in violation of any law, then such provision shall be interpreted to be as restrictive as possible within the bounds of the law. However, this provision is intended to limit the structure and use of all Residences and Lots to single Household to the fullest extent allowed by law. To the extent the law mandates deviation from this Declaration's single Household use and occupancy restrictions, including but not limited to the operation of a Household Care Facility, such deviation is only permitted to the extent that the necessary approval of such use or occupancy has been requested and secured from the Architectural Control Committee or Homeowner Advocacy Committee, as required by and outlined in Article VIII below.

**"Household"** shall mean a domestic unit that resides in and shares in common a single dwelling unit and consists of one or more individuals related by blood, marriage, adoption, or recognized legal union or guardianship, and not more than two unrelated adult individuals. The term shall further encompass the Occupants of any Household Care Facility or any other domestic unit whose use of the Lot

as such has been approved pursuant to Article VIII. *[To be clear, not more than THREE unrelated adult individuals may occupy a residence.]*

**3.6 Signs.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted on, painted on, or attached to any Residence, fence, or other improvement upon such Lot so as to be visible from public view except as follows: *[FOR LEASE OR SIMILAR SIGNS ARE NOT PERMITTED].*

**3.15 Leasing.** Lease of a Lot, any improvements located thereon, or any appurtenances thereto is not permitted unless such Lease fully complies with all terms of this Declaration and any applicable provisions of any other Dedicatory Instrument. The following terms govern the Lease of any Lot and Residence within the Subdivision:

(a) Requirements for Lease of Lot. It is permitted for Owners to Lease a Lot and Residence in the Subdivision, provided that:

- I. The Lease is for residential purposes;
- II. The Occupants under the Lease comprise a “single Household”, as defined herein;
- III. The Occupants under the Lease are leasing the entire, undivided Lot and all improvements located thereon and all appurtenances thereto;
- IV. The Lease (1) is documented in writing, (2) provides that the lessee shall be bound by and subject to all terms of the Dedicatory Instruments, (3) provides that failure to perform and abide by the same shall be a default thereunder by said lessee, and (4) complies with any other requirements of the Dedicatory Instruments;
- V. The Lease provides that such Lease may be terminated in the event of a serious or ongoing violation of the Dedicatory Instruments by the lessee, any Occupant of the leased Lot and Residence, or any of either’s agents, invitees, or licensees, and that the Association, in its sole discretion, may require termination of the Lease by the Owner and eviction of the Tenant and all Occupants in such event (though the Lease of the Lot and Residence shall not relieve any Owner from compliance with the Dedicatory Instruments);
- VI. The Lease specifies that the Owner must provide any lessee with a copy of this Declaration and any other Dedicatory Instruments under which the lessee’s conduct is regulated at or before the signing of any Lease, and the Owner must actually provide the lessee with such documents as indicated;

VII. The Lease provides that the Occupants may not sublease or otherwise permit a change in Occupants;

VIII. The Lease is for no term shorter than one (1) year, and the Lot is not subject to more than two (2) separate leases within a calendar year;

IX. The Owner and Occupants have provided prior written representation regarding the names of Occupants and compliance with these terms to the Association, in form satisfactory to the Association; and

(b) The Owner has registered with, and received the required permitting from, the City of Richardson and any other legally required regulatory body. See City website: <http://www.cor.net/index.aspx?page=416>

(c) Temporary Tenancy. The Lease of a Lot is prohibited where any Tenant does not intend to make the Lot's Residence the Tenant's primary residence, or where the use of the Lot will involve transient housing, including but not limited to, transitional housing, Halfway Houses, Rehabilitation Care Facilities, hotels, motels, event or party venues, tourist homes or houses, lodging houses, inns, rooming houses, bed and breakfasts, and/or vacation rentals, unless such use is required to be permitted by state or federal law.

(d) Business Use By Virtue of Leasing. The Lease of Residence for residential purposes shall not be considered a "business" provided that none of the following collectively Lease more than one Lot at any time: (i) an Owner; (ii) such Owner's Household; or (iii) any Person related to such Owner for the purposes of business involving real property. This provision shall not preclude the Association or any institutional lender from leasing multiple Residences or Lots upon taking title following foreclosure of either's security interest in such Residences or Lots or upon either's acceptance of a deed in lieu of foreclosure.

(e) Further Rules and Regulations. The Association shall have the right to promulgate further rules and regulations concerning Leases and to require a Lease Addendum in a form acceptable to the Association to be executed by all lessees, binding them to the terms of the governing documents, including but not limited to full liability for any violations thereof.

**3.30 Occupants Bound.** All provisions of the Dedicatory Instruments applicable to the Subdivision and Owners shall also apply to all Occupants of any Lot or Residence. Every Owner shall cause all Occupants to comply with the foregoing, and every Owner shall be responsible for all violations, losses, or damages caused by any Occupant, notwithstanding the fact that such Occupant is jointly and severally liable for the same and may be personally sanctioned for any violation. In addition to all other remedies available to the Association, in the event of a serious or ongoing violation by an Occupant, the Association may require that the Occupant be permanently ejected from the Subdivision by the Owner or that any Lease, agreement, or permission given

entitling the Occupant to be present in the Subdivision be terminated.

**8.13 Prior Notice and Representation by Owner and Lessee Regarding Compliant Use and Occupancy.**

(a) An Owner who intends to Lease a residence within the Subdivision shall provide prior notice to the Association. The notice shall include a representation from both the Owner and potential lessee confirming that the proposed Lease will fully comply with all terms of the Dedicatory Instruments including, without limitation, Section 3.15 of this Declaration.

(b) The HAC may develop and mandate the use of a form of notice sufficient to comply with the requirements of the Dedicatory Instruments. Such form of notice shall not require the submission of any information prohibited by law, but may require submission of other information deemed necessary by the Association. *[A form available under the "Landlord Resources" section of the HOA website may be used to meet this requirement: <http://www.sherrillpark.com/NEWForms.html> ]*

(c) The HAC is authorized and empowered to consider and review any and all aspects of the use and occupancy of a property subject to a Lease as defined herein. The HAC shall have the authority to verify any use of a Residence, Lot, or property within the Subdivision and to interpret the general intent, effect, and purpose of all relevant rules, regulations, and restrictions.

(d) Authority to enforce the rules, regulations, and restrictions related to Leases and Leasing is vested with the Board and any enforcement action related to Leases and/or Leasing must be approved by the Board. Once approved, however, the Board may delegate an enforcement action to the HAC.

(e) A Lease to a Household that includes an adult individual related to the Owner by blood, marriage, or adoption shall be reported to the Association but shall not be subject to any subsequent reporting as defined in Section 8.14.

**8.14 On-going Representation by Owner and Occupant Regarding Use and Occupancy Conformance.**

The Owner of any Residence or Lot within the Subdivision that has been Leased shall inform the Association of any material changes to the use and occupancy of the Residence or Lot, as well as to the specific Occupants thereof, prior to any such change. In any event, and not less frequently than annually, the Owner of a Leased property shall confirm to the Association that the Lease remains in compliance with all rules, regulations, and restrictions outlined herein and shall further submit any information required by the Association, subject to all legal restrictions (annual confirmation).

**8.15 Lease Contents.** All Leases used with the Subdivision must incorporate, by reference and by actual inclusion as an exhibit, this instrument and any other relevant Dedicatory Instrument(s).

**8.16 Nonconforming and Unapproved Use, Occupancy or Occupants.** The Association may require any Owner of a Leased property, or any Property approved pursuant to Section 8.18, to make appropriate changes to the use or occupancy of a Residence or Lot, or to any occupant(s) of a Residence or Lot, should the Association find any failure to conform to the processes set forth in this Article. In the event of an Owner's failure to provide any annual confirmation, or in the event that an Owner's annual confirmation proves to be inaccurate, it shall be presumed the use of the Leased property is nonconforming.

**8.17 No Liability.** Neither the Association, the HAC, the Board nor the officers, directors, members, employees, and agents of the foregoing, shall be liable in damages or otherwise to anyone submitting information related to the use and occupancy of Leased residences, or to any Owner of a Lot affected by these restrictions, including but not limited to any Owner affected by an enforcement action or an Owner seeking a variance and/or reasonable accommodation, by reason of mistake in judgment, negligence, or nonfeasance arising out of any action or inaction undertaken as part of the any process outlined in this Article. Every person who submits such information, and every Owner of any Lot, agrees that they will not bring any action or suit against the Association, the HAC, the Board, or the officers, directors, members, employees, and agents thereof, to recover any damages, whether accrued or otherwise, and hereby releases, remises, and quitclaims all claims, demands, and causes of action arising out of or in connection with any such judgment, negligence, or nonfeasance and further waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. Under no circumstances shall the Association, the HAC, the Board or any officers, directors or HAC members be deemed fiduciaries to the applicants for Leasing approval or to the membership affected by any approved use or occupancy of leased property.

**8.18 Reasonable Accommodation.** Upon submission of a written request for same, the Association may, from time to time permit an Owner the use or occupancy of a property in variance from any established neighborhood occupancy standards provided in this Declaration. This shall include, but not be limited to, the standards provided in Section 3.1. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general intent of this document and of the community. Each request for a reasonable accommodation submitted hereunder may be reviewed without reference to other requests for or grants of an accommodation and the grant of a variance accommodation to any Owner shall not constitute a waiver of the Association's right to strictly enforce the covenants, restrictions, and neighborhood occupancy standards provided hereunder, against any other Owner. Any denial of a variance or reasonable accommodation shall be appealable to the Board, subject to rules, policies, and procedures to be adopted by the Board designed to effectuate efficient management of variance appeals. No member of the HAC or the Association shall be liable to any Owner for any claims, causes of action, or damages

arising out of the grant of any accommodation to an Owner or the denial of a variance to an Owner.

**8.19 Policies and Procedures/Appeals.** The Association shall adopt policies and procedures necessary to effectuate the requirements of this Article. Any action by the HAC may be appealed to the Board.

**8.20 Effective Date Regarding Existing Leased Properties.** Owners of Properties that are Leased prior to the date this Declaration must comply with all terms not later than the earlier of (a) the next Lease renewal date established by the current Lease, (b) the next change in Occupants of the Residence, or (c) one year after this Declaration becomes effective.

If you have any questions or need clarification, you may contact a member of the Homeowner Advocacy Committee ("HAC")

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