D217292313 12/20/2017 12:46 PM PGS 74 Fee: $308.00 Submitter: SIMPLIFILE

Electronically Recorded by Tarrant County Clerk in Official Public Records Mary Louise Garcia Mary Louise Garcia

Unofficial Copy

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR GLENWYCK

Fort Worth, Texas
(Tarrant County)

Declarant

D. R. Horton - Texas, Ltd.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

~ 10 KEY NOTES ABOUT HOMEBUYING ~
IN GLENWYCK
BEFORE BUILD-OUT & SELL-OUT

Our common goal ~ a subdivision of completed homes in the hands of owners who control the destiny of their HOA.

1. Mandatory Membership. From the date this Declaration is recorded, the land described in Appendix A will be subject to this Declaration, which establishes a mandatory membership association of property owners. Current and future owners of the land, and any land added to the development, will automatically be members of the Association.

2. Location & Name. On the date of this Declaration, Glenwyck is located in the City of Fort Worth, Texas, and in the Crowley Independent School District. This is not the only "Glenwyck" subdivision in Tarrant County.

3. Obligation for Assessments. A home buyer is obligated to the Association for assessments from the first day of owning the home. Depending on date of closing, part or all of an annual assessment may be collected at time of purchase. New owners are advised to calendar the due date for the next assessment or installment.

4. Restricted Environment. A homeowner in Glenwyck cannot do "anything he wants" with his yard and the outside of his home. Even the color of his fence stain must conform to certain requirements.

5. Declarant's Role. The developer or "Declarant" has a significant economic interest in overseeing the complete, orderly, and successful development, build-out, and sell-out of Glenwyck. During the development period, Declarant reserves many significant rights to oversee the complete build-out and sell-out of homes in the development. One of Declarant's reserved rights is "controlling" the Association by appointing its officers and directors during the build-out of Glenwyck. Declarant intends to control the Association for the maximum length of time permitted by Texas law.

6. Change is Possible. Prior to build-out, Declarant may change or eliminate any feature of Glenwyck (subject to governmental approval, if applicable). *Declarant is not required to provide a proposed feature of Glenwyck that is not in place when an owner contracts to buy a home in Glenwyck.*

7. Declaration Concepts. This form of declaration employs some concepts and terms that are not traditional ~ primarily in Appendixes B and C. Why? To do a better job of communicating the elements of land development and home building that must be respected - even protected - to create successful neighborhoods and governing associations that contribute to the economy and well-being of our cities, State, and nation.

8. Separation of Powers. The for-profit business of creating and marketing the Property is distinct from the non-profit operation of the Association for the benefit of homeowners and residents. Although homeowners will, in time, control the governance and destiny of Glenwyck, homeowners do not have a voice, role, or influence on any aspect of how the Property is created, constructed, built-out, and sold-out by Declarant and Builders.

9. Marketing Advantage. Declarant and Builders have rights and opportunities for marketing new homes that are not available to individual homeowners who desire to market their homes for resale. A homeowner who tries to resell his home before Glenwyck is sold-out will be competing against Declarant or Builders with new houses and a marketing advantage.

10. Organization of Declaration. To make this Declaration more readable for the generations of homeowners that will own homes in Glenwyck, most of Declarant's rights and reservations are compiled in Appendix B and Appendix C of this Declaration, which are in every way superior to and controlling over the main body of this Declaration. Speaking of appendixes, until Glenwyck is built-out and sold-out, the appendixes of this Declaration are the most important parts of all the Governing Documents.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Document

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR GLENWYCK

TABLE OF CONTENTS

PAGE

ARTICLE 1 - DEFINITIONS 1

1.1. DEFINED TERMS 1
1.2. DEVELOPMENT TERMS 3

ARTICLE 2 - SUBJECT TO DOCUMENTS 3

2.1. SUBJECT TO DOCUMENTS OF RECORD 3
2.2. COVENANTS IN PLAT 4
2.3. DEVELOPMENT AGREEMENTS 4
2.4. OWNER AGREES TO BE BOUND 4
2.5. ASSOCIATION AS BENEFICIARY 4
2.6. DECLARANT RIGHTS 4

ARTICLE 3 - CERTAIN PROPERTY FEATURES 4

3.1. LIMITED DISCLOSURES 4
3.2. RETAINING WALLS 5
3.3. RETAINING WALLS ON SOUTH PERIMETER LOTS 5
3.4. DIRT DISCLOSURE 5
3.5. EXPANSIVE CLAY SOIL 5
3.6. WATER DETENTION AREAS 6
3.7. COMMERCIAL NEIGHBORS 6
3.8. LAND USE 6
3.9. ENVIRONMENTAL CONDITIONS 6
3.10. CITY ORDINANCES 6
3.11. THRU-STREET DISCLOSURE 7
3.12. STREETS WITHIN PROPERTY 7

ARTICLE 4 - PROPERTY EASEMENTS AND RIGHTS 7

4.1. GENERAL 7
4.2. SURFACE WATER EASEMENT 7
4.3. EASEMENT FOR ENTRY FEATURES 7
4.4. EASEMENT FOR PERIMETER FEATURES 8
4.5. OWNER'S EASEMENT OF ENJOYMENT 8
4.6. OWNER'S INGRESS/EGRESS EASEMENT 8
4.7. OWNER'S RIGHT TO BUILD 8
4.8. RIGHTS OF CITY 9
4.9. ASSOCIATION'S ACCESS EASEMENT 9
4.10. UTILITY EASEMENT 9
4.11. MINERAL INTERESTS 10
4.12. OIL & GAS ACTIVITY 10
4.13. NOTICE OF LIMITATION ON LIABILITY 10

Official Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

ARTICLE 5 - COMMON PROPERTY 10

5.1. OWNERSHIP 10
5.2. USE 10
5.3. CHANGE OF USE 11
5.4. CONVEYANCE BY OR TO ASSOCIATION 11
5.5. ACCEPTANCE 11
5.6. COMPONENTS 12
5.7. LIMITED COMMON AREA 12
5.8. PERSONAL RESPONSIBILITY 12

ARTICLE 6 - ARCHITECTURAL COVENANTS & USE RESTRICTIONS 13

6.1. GENERAL PROVISIONS 13
6.2. ALLOWED ACTIVITIES 14
6.3. OWNER'S DUTY 15
6.4. DEFAULT-BASED DENIAL 15
6.5. SPECIFICATION SOURCES 15
6.6. OWNERS MANUAL 15
6.7. ARCHITECTURAL REVIEW COMMITTEE 16
6.8. ARC APPROVAL REQUIRED 17
6.9. APPLICATION FOR APPROVAL 17
6.10. TIME LIMITS 18
6.11. REASONABLE ACCOMMODATION FOR HANDICAP 18
6.12. ACCESSORY DWELLING UNIT 19
6.13. CO-ADJACENT LOT 19
6.14. VARIANCE 19
6.15. ASSOCIATION'S RIGHT TO PROMULGATE RULES 19
6.16. ASSOCIATION'S RIGHT TO POST SIGNS 20
6.17. SUBJECTIVE STANDARDS 20
6.18. LIMITS TO OWNER'S RIGHTS 20
6.19. LIMITED ROLE OF DECLARANT 20

ARTICLE 7 - ASSOCIATION OPERATIONS 20

7.1. MANDATORY MEMBERSHIP 20
7.2. THE ASSOCIATION 21
7.3. BOARD 21
7.4. MEMBERS & VOTING 21
7.5. HEAD COUNTS 21
7.6. DECISION-MAKING 22
7.7. MANAGER 22
7.8. ARRANGEMENTS WITH OTHER ASSOCIATIONS 22
7.9. COMMUNICATIONS 22
7.10. BOOKS & RECORDS 22
7.11. INDEMNIFICATION 22
7.12. INSURANCE 22
7.13. OBLIGATIONS OF OWNERS 23
7.14. DECLARANT MAY ACT FOR BOARD 24

ARTICLE 8 - COVENANT FOR ASSESSMENTS 24

8.1. GENERAL 24
8.2. BOARD DISCRETION 24
8.3. PERSONAL OBLIGATION 24
8.4. USES OF ASSESSMENTS 25
8.5. ANNUAL BUDGET 25
8.6. SURPLUS & SHORTFALL 26

Appendix B and Appendix C have priority over the main body of this Declaration.

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

8.7. BETTERMENTS 26
8.8. OWNERS' CONTROL FOR ASSESSMENT INCREASES 27
8.9. TYPES OF ASSESSMENTS 27
8.10. BASIS & RATE OF ASSESSMENTS 27
8.11. DUE DATE 27
8.12. DECLARANT EXEMPTION 28
8.13. ASSOCIATION'S RIGHT TO BORROW MONEY 28
8.14. LIMITATIONS OF INTEREST 28
8.15. EFFECT OF NONPAYMENT OF ASSESSMENTS 28

ARTICLE 9 - RESERVE FUNDS 29

9.1. GENERAL 29
9.2. REPAIR & REPLACEMENT RESERVES 29
9.3. OPERATIONS RESERVES 29
9.4. DISCRETIONARY RESERVES 30
9.5. DECLARANT EXEMPTION 30

ARTICLE 10 - ASSESSMENT LIEN 30

10.1. CREATION & PERFECTION OF LIEN 30
10.2. LIEN SUPERIOR TO HOMESTEAD 30
10.3. OTHER SUPERIORITIES 30
10.4. EFFECT OF MORTGAGEE'S FORECLOSURE 30
10.5. NOTICE AND RELEASE OF NOTICE 30
10.6. POWER OF SALE 31
10.7. FORECLOSURE OF LIEN 31

ARTICLE 11 - ENFORCING THE DOCUMENTS 31

11.1. RIGHT TO ENFORCE 31
11.2. BOARD DISCRETION 31
11.3. NOT LACHES 31
11.4. CONSISTENCY BY CIRCUMSTANCE 31
11.5. AFTER-THE-FACT APPROVAL 32
11.6. COSTS OF ENFORCEMENT 32
11.7. NOTICE AND HEARING 32
11.8. REMEDIES 32

ARTICLE 12 - MAINTENANCE AND REPAIR OBLIGATIONS 33

12.1. ASSOCIATION MAINTAINS 33
12.2. OWNER RESPONSIBILITY 34
12.3. OWNER'S DEFAULT IN MAINTENANCE 34
12.4. FENCES BETWEEN LOTS 34

ARTICLE 13 - MORTGAGEE PROTECTION 35

13.1. FIRST MORTGAGEE RIGHTS 35
13.2. CONSENTS OF MORTGAGEES 36

ARTICLE 14 - AMENDMENTS 36

14.1. AMENDMENT BY OR AFFECTING DECLARANT 36
14.2. AMENDMENT BY BOARD 36
14.3. AMENDMENT BY MEMBERS 36
14.4. EFFECTIVE 36
14.5. ANNEXATION 36

Appendix B and Appendix C have priority over the main body of this Declaration.

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

14.6. APPENDIXES 37
14.7. ORDINANCE COMPLIANCE 37
14.8. MERGER 37
14.9. TERMINATION 37
14.10. CONDEMNATION 37

ARTICLE 15 - INDEMNIFICATION & RELEASE 37

15.1. CONSIDERATION 37
15.2. RELEASE FOR HEALTH, WELFARE, SAFETY 37
15.3. PRIVACY 38
15.4. SECURITY 38
15.5. INDEMNITY FOR ASSOCIATION OPERATIONS 38
15.6. RELEASE FOR INJURY OR LOSS 38
15.7. INTENT TO RELEASE FROM NEGLIGENCE 39
15.8. AGAINST SELF-INTEREST OF OWNER OR OCCUPANT 39

ARTICLE 16 - DISPUTE RESOLUTION 39

16.1. INTRODUCTION & DEFINITIONS 39
16.2. MANDATORY PROCEDURES 40
16.3. NOTICE 40
16.4. NEGOTIATION 40
16.5. MEDIATION 40
16.6. TERMINATION OF MEDIATION 40
16.7. ALLOCATION OF COSTS 40
16.8. ENFORCEMENT OF RESOLUTION 40
16.9. GENERAL PROVISIONS 40
16.10. LITIGATION APPROVAL & SETTLEMENT 41
16.11. CONSTRUCTION-RELATED DISPUTES 41

ARTICLE 17 - HOME SALES & RESALES 41

17.1. GENERAL 41
17.2. HOA SALE FEES 41
17.3. ADMINISTRATIVE TRANSFER FEES 42
17.4. NEW HOME SALES 42
17.5. HOME RESALES 42
17.6. CHANGES IN AMOUNTS 42
17.7. EXCLUSIONS 43

ARTICLE 18 - COVENANTS FOR DECLARANT'S BENEFIT 43

18.1. OWNERSHIP NOT REQUIRED 43
18.2. ECONOMIC INTEREST 43
18.3. ASSOCIATION FINANCES 43
18.4. AMENDING GOVERNING DOCUMENTS 43
18.5. APPENDIXES B AND C 44

ARTICLE 19 - GENERAL PROVISIONS FOR ALL GOVERNING DOCUMENTS 44

19.1. HIGHER AUTHORITY 44
19.2. COMPLIANCE 44
19.3. CHANGE OF APPLICABLE LAW 44
19.4. NOTICE 44
19.5. CHANGING TECHNOLOGY 45
19.6. LIBERAL CONSTRUCTION 45
19.7. SEVERABILITY 45

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

19.8. CAPTIONS 45
19.9. INTERPRETATION 45
19.10. DURATION 45
19.11. APPENDIXES 45

SIGNED AND ACKNOWLEDGED 46

APPENDIX A - DESCRIPTION OF SUBJECT LAND

APPENDIX B - DECLARANT'S RIGHTS & RESERVATIONS FOR BUILD-OUT & SELL-OUT B-1

B.1. GENERAL PROVISIONS B-1
B.2. DEFINITIONS B-1
B.3. LAND USE RIGHTS & RESERVATIONS B-2
B.4. RIGHTS & RESERVATIONS TO MAKE CHANGES B-4
B.5. ARCHITECTURAL COVENANTS FOR VACANT LOTS B-4
B.6. GOVERNING DOCUMENTS RIGHTS & RESERVATIONS B-5
B.7. MARKETING RIGHTS & RESERVATIONS B-6
B.8. RELATIONSHIP WITH BUILDERS B-7
B.9. SUCCESSOR DECLARANT B-8
B.10. COMMON AREAS B-8
B.11. PARDON OUR DUST B-8

APPENDIX C - DECLARANT'S RIGHTS & RESERVATIONS FOR ASSOCIATION GOVERNANCE C-1

C.1. GENERAL PROVISIONS C-1
C.2. DEFINITIONS C-1
C.3. CLASSES OF MEMBERS C-2
C.4. VOTING C-2
C.5. MAXIMUM SIZE C-3
C.6. BOARD CONTROL RIGHTS & RESERVATIONS C-3
C.7. ASSOCIATION GOVERNANCE C-4
C.8. ACTION IN LIEU OF BOARD C-5
C.9. VETO OVER CERTAIN BOARD DECISIONS C-5
C.10. DECLARANT AS EX-OFFICIO BOARD MEMBER C-5
C.11. ADVISORY & ARCHITECTURAL COMMITTEES C-5
C.12. FINANCIAL RIGHTS & RESERVATIONS C-6
C.13. RIGHT OF REIMBURSEMENT FOR SHORTFALL LOANS C-7
C.14. HOA SALE FEES ON NEW HOME SALES C-8
C.15. HOA SALE FEES ON VACANT LOTS C-9

APPENDIX D - NOTICE OF POSSIBLE OIL & GAS ACTIVITY AFFECTING THE SUBDIVISION

APPENDIX E - RETAINING WALLS E-1

E.1. GENERAL E-1
E.2. ENCROACHMENTS AND EASEMENTS E-1
E.3. MAINTENANCE, REPAIR & ALTERATION E-1
E.4. PERIMETER RETAINING WALLS E-2

Unofficial Document

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
GLENWYCK

This Declaration of Covenants, Conditions & Restrictions for Glenwyck is made by D. R. Horton - Texas, Ltd., a Texas limited partnership ("**Declarant**"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Glenwyck. Declarant also desires to provide a reasonable and flexible procedure by which Declarant may maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and maintenance of portions of Glenwyck, and to protect the value, desirability, and attractiveness of Glenwyck. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant DECLARES that the property described in Appendix A, and any additional property made subject to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's rights and reservations in Appendix B and Appendix C attached hereto, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of any part of the Property. Declarant intends for the encumbrance and subjugation of Glenwyck by this Declaration to be in accordance with the common law doctrines of restrictive covenant and implied equitable servitudes.

ARTICLE 1
DEFINITIONS

1.1. DEFINED TERMS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used. Terms pertaining to development of the Property are identified in the following Section.

1.1.1. "**Applicable Law**" means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "applicable law" on the date of the Governing Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superceded.

1.1.2. "**ARC**" or "**Architectural Review Committee**" means the committee appointed by the board or Declarant, as applicable pursuant to this Declaration, with jurisdiction over certain architectural matters.

1.1.3. "**Architectural Reviewer**" means the entity having jurisdiction over a particular application for architectural approval. The exclusive Architectural Reviewer for new homes on vacant lots is Declarant or Declarant's designee. The ARC is the Architectural Reviewer for existing homes on improved lots.

1.1.4. "**Assessment**" means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or applicable law, including but not limited to the types of assessments defined in the Covenant for Assessments Article of this Declaration.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

1.1.5. "**Association**" means the association of owners of lots in the Property, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The initial name of the Association is Glenwyck Owners Association.

1.1.6. "**Board**" means the board of directors of the Association.

1.1.7. "**City**" means the City of Fort Worth, Texas, in which the Property is located.

1.1.8. "**Common Area**" means a portion of the Property that is not a "Lot" and which is identified on a plat or in this Declaration as intended, reserved, or dedicated for use, maintenance, or ownership by the Association.

1.1.9. "**Common Property**" means real property, improvements to real property, and personal property that is used, maintained, or owned by the Association for the use or benefit of owners and residents, including common areas. In most contexts, "common property" may be used interchangeably with "common area."

1.1.10. "**Declarant**" means D. R. Horton - Texas, Ltd., a Texas limited partnership, or the successors and assigns of D. R. Horton - Texas, Ltd., which acquire the status of Successor Declarant according to the terms of the Successor Declarant section of Appendix B of this Declaration.

1.1.11. "**Declaration**" means this document, as it may be amended, supplemented, and restated from time to time.

1.1.12. "**Governance Policy**" means a policy or procedure of the Association that pertains to governance matters, as distinguished from property uses. Examples of governance matters include membership, voting, meetings, collections, and enforcement. The initial governance policies and procedures are compiled in the "**Governance Policy Book**", a term which may also be used to refer to each constituent policy and procedure, whether recorded separately or as part of the compilation.

1.1.13. "**Governing Documents**" means, singly or collectively as the case may be, the Plat, this Declaration, the Owners Manual, the Bylaws of the Association, the Articles of Association, the Governance Policy Book, and any other writing that affects the relationship of owners to the Property, to the Association, or to each other, as any of these may be adopted, amended, supplemented, restated, or repealed from time to time. Although Governing Documents reference each other and may be recorded contemporaneously, each instrument is independent and may be amended pursuant to its own terms or applicable law.

1.1.14. "**Lot**" means a portion of the Property, as shown on the Plat, intended for independent ownership and construction of a dwelling. As a defined term, a "lot" is not a common area and does not automatically become a common area if acquired by the Association. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot. For certain purposes, the Governing Documents may distinguish between vacant lots and improved lots. As used in the Governing Documents, a "**vacant lot**" is a lot on which a dwelling has never been built or a lot on which the initial dwelling is under construction, and an "**improved lot**" is a lot on which the initial dwelling is or was substantially complete or completed. An improved lot retains its status even if the initial improvements are removed or destroyed.

1.1.15. "**Member**" means a member of the Association, unless the context indicates that member means a member of the board or a member of a committee of the Association. Although every owner is a member of the Association, each lot has one Association membership. If a lot is co-owned, the lot's single membership is shared jointly or collectively by the co-owners of the lot.

1.1.16. "**National Lender**" means a nationwide institutional quasi-public mortgage lender, mortgage purchaser, mortgage insurer, mortgage underwriter, or mortgage guarantor, such as Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

1.1.17. "**Owner**" means a holder of recorded fee simple title to a lot. Declarant is an owner for each lot owned by Declarant. A Builder who acquires title to a lot for the purpose of constructing a house for sale to homebuyers is an owner. Mortgagees and creditors who acquire title to a lot through foreclosure or a deed in lieu of foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners.

1.1.18. "**Owners Manual**" refers to the Owners Manual of Rules & Regs for Glenwyck, that certain Governing Document consisting of chapters that contain covenants, conditions, restrictions, specifications, rules, and regulations pertaining to many aspects of the lots and the improvements thereon, such as the appearance, maintenance, improvement, use, and occupancy of the improved lots. The Owners Manual deals with property uses, as distinguished from the Governance Policy Book. "Owners Manual" refers collectively to the compilation of chapters, and also refers to each constituent chapter, whether recorded separately or as part of the compilation.

MOST "DOs and DON'Ts" ARE IN THE OWNERS MANUAL

1.1.19. "**Plat**" means that certain Final Plat of Glenwyck, recorded on July 1, 2017, as Document No. D217160403, Plat Records, Tarrant County, Texas, as it may be amended, corrected, or replatted from time to time, in whole or in part, and the plat of any other real property that is made subject to this Declaration, including dedications, covenants, limitations, restrictions, easements, notes, and reservations shown thereon.

1.1.20. "**Property**" means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Glenwyck. The Property includes the land described in Appendix A of this Declaration, as it may be amended or supplemented from time to time, and any additional land made subject to this Declaration, and includes every lot and any common area thereon.

1.1.21. "**Resident**" means an occupant of a dwelling, regardless of whether the person owns the lot.

1.1.22. "**Rules**" means the rules ~ singly and collectively ~ adopted by Declarant or by the Association in accordance with the Governing Documents or applicable law, and which are contained in one or more writings which may be referred to by a variety of names, such as (without limitation) rules, regulations, guidelines, procedures, manuals, policies, standards, specifications, and resolutions. If customary, rules may be "published" on signs posted or painted on the Property, or communicated to owners as temporary or seasonal rules that are circumstance-based. Rules may properly be used to refer to an instrument, sign, or communique that contains rules, and may also be used to refer to the individual rules within an instrument, sign, or communique. Certain covenants, conditions, and restrictions may be referred to as rules, the terms not being entirely mutually exclusive.

1.2. DEVELOPMENT TERMS. The following defined terms pertaining to development of the Property are contained in Appendix B and Appendix C of this Declaration, and hereby incorporated by reference: (1) **Builder**, (2) **Build-Out**, (3) **Declarant Control Period**, (4) **Development Period**, (5) **Sell-Out**, (6) **Shortfall**, and (7) **Unilaterally**.

ARTICLE 2
SUBJECT TO DOCUMENTS

2.1. SUBJECT TO DOCUMENTS OF RECORD. All real property subject to this Declaration, including the property described in Appendix A, and any other real property that is made subject to this Declaration, is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms of all publicly recorded Governing Documents, and all other publicly recorded instruments that touch and concern the land, run with the Property, and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns. This Declaration may contain certain disclosures about publicly recorded or publicly accessible documents that do or may affect the Property. Such disclosures are not intended to identify every publicly recorded or publicly accessible document affecting the Property. Neither the Association nor Declarant makes any representation that these are the only noteworthy documents affecting the Property. Every prospective owner and resident must make an independent investigation of documents affecting the Property, and make inquiries of anything that concerns him.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Document

2.2. COVENANTS IN PLAT. The plat may contain dedications, covenants, limitations, restrictions, easements, duties, notes, or reservations (collectively "covenants" for this Section). Each owner must inform himself about the plat's covenants on his lot and those affecting his use or enjoyment of the lot and common areas. A label, such as "Open Space," on a platted common area is not a covenant that prevents improvement or change of use.

Even the subdivision plat speaks to your use of your lot. Check it out.

2.3. DEVELOPMENT AGREEMENTS. Glenwyck is subject to - and bound by - a number of publicly recorded agreements that create certain duties and rights for the Association. The Association's leadership and management must be informed about agreements that affect the Property and the Association, such as (without limitation) the following:

- Restrictive covenants in instrument recorded on February 11, 1998, as Document No. D198028239, in Volume 13077, Page 469, Real Property Records, Tarrant County, Texas.

- Development and Easement Agreement, recorded on September 23, 2016, as Document No. D216223314, Real Property Records, Tarrant County, Texas.

- Restrictive covenants in Exhibit C of the instrument recorded on September 23, 2016, as Document No. D216223312, Real Property Records, Tarrant County, Texas.

- Stormwater Facility Maintenance Agreement, recorded on May 15, 2017, as Document No. D217107217, Real Property Records, Tarrant County, Texas.

When you buy a Glenwyck home, you also buy into the Governing Documents.

2.4. OWNER AGREES TO BE BOUND. Each owner, by impliedly or expressly accepting or acquiring an ownership interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Declaration, the plat, and the other Governing Documents. By acquiring the ownership interest before the Property is fully developed, expanded, Built-Out, and Sold-Out, each owner covenants, agrees, and acknowledges that Appendixes B and C of this Declaration control over anything to the contrary in the main body of this Declaration. Each owner further covenants that Declarant's economic interest in the Property is not tied to ownership of a lot, but rather to the Property's completion, regardless how the lots are owned. Additionally, each owner acknowledges that each Governing Document may be amended, supplemented, or restated from time to time. Each owner also agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility or for which responsibility is delegated to the owner by this Declaration.

2.5. ASSOCIATION AS BENEFICIARY. The Association may have enforcement rights (not duties) pertaining to the use of a parcel of adjacent land, according to the terms of that certain Use Restriction Agreement, recorded on September 23, 2016, as Document No. D216223313, Real Property Records, Tarrant County, Texas.

2.6. DECLARANT RIGHTS. The rights of Declarant in the Declaration, particularly in the attached Appendixes B and C, override and supercede every provision of this Declaration and the other Governing Documents for the applicable periods of time. Accordingly, some provisions in this Declaration do not apply during Build-Out or Sell-Out, or during the Declarant Control or Development Periods.

ARTICLE 3
CERTAIN PROPERTY FEATURES

3.1. LIMITED DISCLOSURES. The plat, this Declaration, the Owners Manual, the other Governing Documents, future websites maintained by or for the Association, print or electronic materials used in marketing or describing the Property, and any other type of document or resource related to the Property, may contain certain disclosures about the Property and its location that are intended to help inform prospective and current owners and residents about certain features or attributes that may pertain to the Property. Such disclosures are not intended to identify every feature,

© 2017. Sharon Reuler, P.C. All Rights Reserved.

attribute, condition, or unusual aspect of the Property that may affect property values or the quality of life within the Property. Such disclosures are not intended to, and do not, constitute a full disclosure of the disclosed feature, attribute, or condition. Providing a disclosure does not create a duty for Declarant or the Association to make additional disclosures. An omission may not be construed as intentional or misleading. Neither the Association nor Declarant makes any representation that published disclosures are the only noteworthy or most significant features of the Property. Also, a mistaken disclosure about a feature or attribute that does not exist may not be construed as an attempt to deceive, and does not create a duty for Declarant or the Association to provide the feature or attribute. Every prospective owner and resident must make an independent inspection and investigation of the lot and the Property, its location, adjoining and nearby land uses, and publicly accessible documents and resources affecting the lot and the Property, and has a duty to make inquiries of anything that concerns him.

RETAINING WALLS CREATE DUTIES FOR HOMEOWNERS

3.2. RETAINING WALLS. The Property has a number of retaining walls, some of which may not be apparent when visiting Glenwyck. Each owner and prospective purchaser is solely responsible for learning whether his lot supports or is supported by a retaining wall and, if so, the corresponding legal duties and financial obligations for the retaining wall and to the owner of the land on the other side of the retaining wall, as described in the attached Appendix E of this Declaration, titled "Retaining Walls," and the Owners Manual chapter titled "Retaining Wall Maintenance Specifications," both of which are incorporated by reference. By acquiring an ownership interest in a lot that contains, abuts, supports, or is supported by a retaining wall, the owner acknowledges and accepts the rights and responsibilities created by this Declaration for the retaining wall.

DON'T LET "OUT-OF-SIGHT" BE "OUT-OF-MIND"

BACK YARDS ON SOUTH SIDE ARE SUPPORTED BY RETAINING WALLS

➤ LANGSIDE LANE (ODD NUMBERS) &
➤ BALLATER DRIVE (8041 & 8045) - 2 LOTS AT CORNER

3.3. RETAINING WALLS ON SOUTH PERIMETER LOTS. This Section pertains to the retaining walls that support the lots along the south perimeter of the Property, being homes on Langside Lane with odd number addresses, and the two lots on the outside corner of Ballater Drive's turn to Langside Lane, referred to in this Section as the "**South Perimeter Lots**". **Each owner of a South Perimeter Lot is solely responsible for all aspects of the segment of retaining wall and the fencing atop the retaining wall located on or along the border of the South Perimeter Lot.** This Declaration cannot create an obligation for the owner of land on the other side of the perimeter retaining wall because that land is not subject to the Declaration. Accordingly, the owner of a South Perimeter Lot may have no lawful right to access the adjacent land for purposes of inspecting, maintaining, repairing, and reconstructing the retaining wall, if and when needed. By acquiring an ownership interest in a South Perimeter Lot, the owner acknowledges that if access to land on the far side of the retaining wall is not available, other options for repairing or replacing the retaining wall may result in excavation and removal of soil from the owner's South Perimeter Lot, the practical loss of portions of the usable surface of the owner's South Perimeter Lot, and substantially more expense than if the owner had unfettered access to the land on the far side of the retaining wall to perform the required work. **The owner of a South Perimeter Lot is advised to obtain professional evaluation of the significance of this Section before making any change to the back yard.**

3.4. DIRT DISCLOSURE. No representation is made that any lot or common area in Glenwyck is on native virgin soil or that the soil has a particular nutritional value for plants. This disclosure is made to give inquiry notice to prospective owners, who may make their own determinations about the composition and nutriments of the material on and beneath the surface of any lot in the Property.

3.5. EXPANSIVE CLAY SOIL. The homes and other improvements in Glenwyck are built on ground that may be composed partly or wholly of expansive clay soils, which are prone to expand and contract in response to wetness and drought if the homeowner does not properly maintain the soil to prevent soil movement. Cycles of shrinkage and swelling may put stress on structures, resulting in property damage and diminished property values. Each owner is responsible for preserving the structural integrity of the home and other improvements on the lot by maintaining the moisture content

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

of the lot's soil to reduce the potential for soil movement that may result in damage to improvements. Each owner is advised to pay particular ongoing attention to any circumstance or change of circumstance that affects drainage of the lot, such as inadequate grading or drainage facilities to carry water away from the home's foundation, growth of improper vegetation near the home's foundation, the presence of groundwater or other subsurface condition affecting the lot, and uneven watering of the lot. This Section may apply to any lot in Glenwyck, including a lot with an overlay of quality topsoil.

When is a pond not a pond?
Water detention areas may sometimes be water-filled and sometimes bone-dry.

3.6. WATER DETENTION AREAS. The common areas of the Property include one or more water detention areas required by the City for the management of surface water runoff, pursuant to the Stormwater Facility Maintenance Agreement, recorded on May 15, 2017, as Document No. D217107217, Real Property Records, Tarrant County, Texas. Because a water detention area may be sometimes "wet" and sometimes "dry," depending on climate conditions, permanent landscaping can be a challenge. A water detention area may require periodic dredging or desilting, which may be unsightly. Without the City's approval, a water detention area may not be used for any purpose that interferes with its role in surface water management. This explanation is for persons who wonder why those areas are not more extensively maintained, improved, landscaped, or used.

3.7. COMMERCIAL NEIGHBORS. On the date of this Declaration, land in the vicinity of the Property is used or zoned for non-residential purposes, such as educational, commercial, and industrial. Also, some nearby tracts are undeveloped. Prospective owners and residents are encouraged to inform themselves about every aspect of current and proposed uses of adjacent and nearby land. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over the zoning, development, or use of adjacent and nearby land.

These are only SOME of the unique attributes of Glenwyck.

3.8. LAND USE. By acquiring an ownership interest in a lot, each owner acknowledges that the ownership, uses, platting, and development of land within, adjacent to, or near the Property may change over time, and from time to time, and that such a change may affect the value of owner's lot. Whether an owner is consulted about a proposed change to real property within the vicinity of the owner's lot is a function of local government, and not a function of the Association. Nothing in this Declaration or the other Governing Documents may be construed as a representation of any kind by the Association, Builders, or Declarant as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land. The Association, Builders, and Declarant can not and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air. Words, acronyms, labels, and legends used on a plat to describe land uses are imprecise terms which may be modified by subsequent acts and decisions by public or quasi-public authorities without the formality of amending the plat.

3.9. ENVIRONMENTAL CONDITIONS. In the era in which this Declaration is written, the public is increasingly aware of environmental conditions affecting health and quality of life. The Association has no duty to intervene on behalf of an owner or resident who complains of adverse environmental conditions. If a resident is or becomes sensitive to environmental conditions that now exist or that come into existence at a future time on or near the Property, the resident - at the resident's sole expense - may mitigate those conditions in his home and on his lot, provided the method of mitigation does not damage or interfere with the use of another lot or common area, and does not change the appearance of the Property, without approval of the ARC.

3.10. CITY ORDINANCES. **No amendment of the Governing Documents nor any act or decision of the Association may violate the requirements of City ordinances pertaining to the Property.** The Association should stay informed about the City's requirements for the Property, which may change from time to time.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

3.11. THRU-STREET DISCLOSURE. On the date of this Declaration, at least one public street within the Property may connect to an adjacent subdivision. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that public streets in the Property may be thoroughfares to other subdivisions and that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have no control over the City's street system.

3.12. STREETS WITHIN PROPERTY. Because streets within the Property may be capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Public streets are part of the common area only to the extent a public or quasi-public body, such as the city, county, or a special district, authorizes or delegates to the Association. As to public streets, the Association is specifically authorized to accept from a public or quasi-public body any delegation of street-related duties, and to act as attorney-in-fact for the owners in executing instruments required by applicable law to impose, modify, enforce, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property. Private streets, if any, are part of the common area which is governed by the Association. If the Property has private streets or if State law or local ordinance authorizes the Association to regulate public streets within the Property, the Association is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the Property's streets, such as (1) establishing and enforcing speed limits, (2) regulating the location, use, and appearance of traffic control devices, such as signs and speed humps, (3) designating parking or no-parking areas, (4) establishing limitations or prohibitions on curbside parking, (5) removing or prohibiting vehicles that violate applicable rules and regulations, (6) fining violations of applicable rules and regulations, and (7) implementing programs for controlling access through entrance and emergency access gates, if any.

ARTICLE 4
PROPERTY EASEMENTS AND RIGHTS

4.1. GENERAL. The easements and rights contained in this Article are in addition to, and not in place of, easements and rights established by other publicly recorded documents, such as the plat and the other Governing Documents. Neither the Association nor Declarant makes any representation that these are the only noteworthy easements and rights affecting the Property. Every prospective owner and resident must make an independent investigation of easements and rights affecting the Property, and make inquiries of anything that concerns him.

4.2. SURFACE WATER EASEMENT. By acquiring an ownership interest in a lot, each owner acknowledges that surface water does not respect property lines and that, from time to time, water may flow through and over portions of the lot from adjacent and nearby property. Each lot is hereby burdened with a perpetual easement (the "**Surface Water Easement**") over, across, under, and through the lot for continuous positive drainage of surface or storm water from adjacent and nearby property for the mutual benefit of all lot owners and the Association, regardless of whether or how the Surface Water Easement is shown on a plat or referenced in an instrument of conveyance. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board. Specifically, no person may do anything to a lot or to adjacent property to change the positive drainage pattern for Glenwyck.

IF YOUR HOME IS NEXT TO A SUBDIVISION ENTRANCE FROM WEST CLEBURNE OR SOUTH HULEN, YOU HAVE AN "ENTRY LOT"

4.3. EASEMENT FOR ENTRY FEATURES. This Section applies to each below-named "**Entry Lot**" containing an entry feature installed during Build-Out by Declarant or with the approval of Declarant, and replacements or improvements thereof, and may not be construed to require an entry feature for the Property, nor an entry feature at each entrance to the Property. As used in this Section, "**Entry Feature**" means any improvement installed or maintained by the Association or Declarant at or near an entrance to the Property, such as decorative wood fencing, signage or monuments, landscape elements, and illumination. The Association is hereby granted a perpetual "**Entry Feature Easement**" over each Entry Lot that contains one or more Entry Features, regardless of whether or how the plat shows the easement or Entry Feature. The purpose of the Entry Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's Entry Features, to be maintained by the Association as common property. In exercising this Entry Feature Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the entrance of a residential subdivision. The owner of the Entry Lot will have the continual use and enjoyment of the lot for any purpose that does not interfere with and prevent the Association's use of the Entry Feature Easement. The

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Entry Lot owner may not make any change to an Entry Feature without the Association's prior written approval, which is subject to revocation by the Association. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of an Entry Lot as may be reasonably necessary for the Association to perform its contemplated work on the Entry Feature Easement. This easement is perpetual. The Entry Feature Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to a public body that agrees to accept the assignment. On recording this Declaration, Declarant burdens the following **Entry Lots** with the Entry Feature Easement:

- Lot 14, Block E, in the utility easement along Tollcross Lane at the South Hulen Street entrance
- Lot 1, Block E, in the utility easement along Langside Lane at the South Hulen Street entrance
- Lot 20, Block G, in the utility easement along Tollcross Lane at the West Cleburne Road entrance
- Lot 1, Block H, in the utility easement along Tollcross Lane at the West Cleburne Road entrance
- Lot 10, Block H, outside the building line along Govan Lane at the West Cleburne Road entrance

4.4. EASEMENT FOR PERIMETER FEATURES. This Section applies to certain lots on certain perimeters the perimeter of the Property - the "**Perimeter Lots**" identified below. Generally, these are the lots that are bordered by a Perimeter Feature that is maintained by the Association. As used in this Section, "**Perimeter Feature**" means any improvement, such as landscape elements or fencing, (1) that is relatively continuous and uniform along a perimeter of the Property, (2) that is visible to the public (such as facing a street), (3) that was installed during Build-Out by Declarant or with the approval of Declarant, and replacements or improvements thereof, and (4) which the Association is required or permitted to maintain pursuant to the plat, this Declaration, a public ordinance, a development agreement, or a public or quasi-public authority. The Association is hereby granted a perpetual easement (the "**Perimeter Feature Easement**") over each Perimeter Lot, regardless of whether or how the plat shows the easement or perimeter feature. The purpose of the Perimeter Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's Perimeter Features, to be maintained by the Association as common property. In exercising this Perimeter Feature Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to identifying or screening a residential subdivision. The owner of a Perimeter Lot will have the continual use and enjoyment of the lot for any purpose that does not interfere with and prevent the Association's use of the Perimeter Feature Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of Perimeter Lot as may be reasonably necessary for the Association to perform its contemplated work on the Perimeter Feature Easement. This easement is perpetual. The Perimeter Feature Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to a public body that agrees to accept the assignment. This Perimeter Feature Easement applies only to an original perimeter feature installed by or with the approval of Declarant and replacements thereof, and does not apply or pertain to fences installed by owners on individual lots, even though the lots abut a major thoroughfare. This Section does not pertain to lots and improvements along the Property's south perimeter, which are the South Perimeter Lots referenced in Article 3 above. On recording this Declaration, Declarant burdens the following **Perimeter Lots** with the Perimeter Feature Easement:

- Lots backing up to Columbus Trail and the adjacent common area - Lot 19X, Block A.
- Lots backing up to W. Cleburne Rd and the adjacent common areas - Lot 10X, Blk H & Lot 20X, Blk G.
- Lots backing up to S. Hulen Street and the adjacent common area - Lot 14X, Block E.

4.5. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot. Notwithstanding the foregoing, if a portion of the common area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

4.6. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

4.7. OWNER'S RIGHT TO BUILD. That a lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the lot owner to construct a dwelling on the lot. Nor does a vacant lot enlarge the rights

© 2017. Sharon Reuler, P.C. All Rights Reserved.

of owners of neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

4.8. RIGHTS OF CITY. The City, including its agents and employees, has the right of immediate access to the common property at all times if necessary for the welfare or protection of the public, to enforce City ordinances, or to improve the appearance of or to preserve public property, pubic easements, or public rights of way. If the Association fails to maintain common property to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the common property at the expense of the Association after giving written notice of its intent to do so to the Association. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each owner of a lot as shown on the City's tax rolls. To fund the City's cost of maintaining common property, the City may levy assessments against the lots and owners in the same manner as if the Association levied a special assessment. The rights of the City under this Section are in addition to other rights and remedies provided by law.

4.9. ASSOCIATION'S ACCESS EASEMENT. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon for the below-described purposes. **Access provided by an owner must allow a person to work on the lot without interruption, interference, harassment, or fear, and may not create additional duties for the worker**. If the exercise of this easement requires entry onto an owner's lot, the Association will try to limit its entry according to a schedule that is available to owners, or during reasonable hours and after notice to the owner, unless entry is a response to a situation that - at time of entry - is deemed by the Association to be an emergency that may result in imminent damage to or loss of life or property. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass. The Association may not use this Section as authority to enter a locked or occupied dwelling without the prior consent of the lot owner. The Association may exercise this easement of access and entry for the following express purposes:

(1) To inspect the lot for compliance with maintenance and architectural standards.

(2) To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.

(3) To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.

(4) To enforce architectural standards.

(5) To enforce use restrictions.

(6) To exercise any self-help remedy permitted by the Governing Documents or by applicable law.

(7) To enforce any other provision of the Governing Documents.

(8) To respond to emergencies.

(9) To assist utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

(10) To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

4.10. UTILITY EASEMENT. As used in this Declaration, "**utility**" means every utility and utility-type of function, service, or equipment, whether the provider is public or private, such as (without limitation) water, storm drainage, sewer, trash removal, electricity, fuel, natural gas, telephone, cable television, internet service, fiber optic cable, security, and other telecommunication receiving and distribution systems. This Section may not be construed as a representation that

© 2017. Sharon Reuler, P.C. All Rights Reserved.

any particular utility will be provided. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is hereby granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property. The Association may enter into contracts for utility equipment and services for all or portions of the Property, including bulk rate service agreements. Such contract may provide for installation, operation, management, maintenance, and upgrades or modifications to the utility as the Association determines appropriate. Until Build-Out, Declarant must approve any contract for utility service to a vacant lot. If a particular service or benefit is provided to fewer than all of the lots, or is requested by owners of fewer than all of the lots, the Association may require an owner to pay the service provider directly, or may levy individual assessments against the served lots to fund the expense.

4.11. MINERAL INTERESTS. On the date of this Declaration, it is expected that all mineral interests and water rights will have been reserved by a prior owner of the Property or conveyed pursuant to one or more deeds or other instruments recorded in the Real Property Records of Tarrant County, Texas, including but not limited to rights to all oil, gas, or other minerals and water lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests and water rights were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the mineral and water rights or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

4.12. OIL & GAS ACTIVITY. In the era in which this Declaration is written, there is renewed interest in oil and gas exploration. Owners and occupiers of real property located anywhere in Texas must be aware that activities related to the exploration, drilling, storage, and transportation of oil, gas, and other minerals may occur, from time to time, within, adjacent to, or in the vicinity of the real property that is owned or occupied, typically pursuant to prior-recorded easements, rights, reservations, and mineral deeds. Prospective owners and residents of Glenwyck are encouraged to inform themselves about past, current, or potential future oil and gas activity within, adjacent to, or in the vicinity of the Property, and to evaluate the potential effects of such activity on ownership or occupancy of a lot. The Notice of Possible Oil & Gas Activity Affecting the Subdivision attached hereto as Appendix D is incorporated by reference.

4.13. NOTICE OF LIMITATION ON LIABILITY. The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of plat approval, a governmental entity may require a plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of lot owners. Notwithstanding plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or willful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by a governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising waters.

ARTICLE 5
COMMON PROPERTY

5.1. OWNERSHIP. The designation of real or personal property as common property may be determined by the plat, this Declaration, the Appraisal District, a taxing authority, a recorded deed into the Association, or any combination of these. Mere ownership of the property is not determinative. All costs attributable to common property, such as (if applicable) maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common property, unless this Declaration elsewhere provides for a different allocation for a specific common area.

5.2. USE. The Association determines the use of every common area, and may change the use from time to time. As a general rule, a common area may be used only for the purposes for which the common area is designed, uses that are customary for that type of common area, and uses authorized by the Association. No portion of a common area

© 2017. Sharon Reuler, P.C. All Rights Reserved.

may be "privatized" or used as an extension of a home or yard. On the date of this Declaration, the Property's common areas are intended for the exclusive use of the Property's owners and residents and their guests and are not intended to be a public accommodation or a public facility within the meaning of the Americans with Disabilities Act. This provision may not be construed to prevent the Association from enlarging the use of a common area if such expansion is deemed to be in the best interest of the Association, or from opening a common area to use by the public if public use is a condition of a status or benefit that is deemed to be in the best interest of the Association.

5.3. CHANGE OF USE. From time to time, the Association may modify common property on a temporary or long-term basis, such as to respond to changes of lifestyles, economies, environmental conditions, public policies, or recreational values, provided (1) the board deems the modification to be in the Association's best interest and (2) the modification does not violate an agreement with or requirement of a public or quasi-public entity without the entity's written approval of the modification. Modification includes (without limitation) a change of use, or the removal, addition, re-location, or change of improvements on a common area or improvements that are common property. In connection with the modification, the board may adopt use rules specific to the modification and may limit the applicability of common area use rules that are not applicable to the modification - without amending this Declaration. Unless required by a public or quasi-public entity, a modification does not require an amendment of this Declaration or of the plat, even if a common area was platted or improved for a particular use.

5.4. CONVEYANCE BY OR TO ASSOCIATION. The Association, acting through its board, must accept or convey a real property interest in a common area from or to, as the case may be, Declarant, a special district, a local government, or any other public or quasi-public entity, if the conveyance is required by the Declarant, district, government, or entity, or if the conveyance is necessary to fulfill the original development plan for the Property or to adjust to a change in the original development plan. The Association, acting through its board, may accept or convey a real property interest in a common area from any other person or entity if the board deems such conveyance to be in the best interest of the Association and if the conveyance does not result in a significant or adverse change of land use for residents of the Property. Any other conveyance of a common area, except to and from Declarant, or with Declarant's approval, must be approved by the board and by owners of at least a majority of the lots. Property interests capable of conveyance include, without limitation, fee title to all or part of a common area, an easement across real property, and a lease or license of real property. Notwithstanding anything to the contrary in this Declaration, if the Property is subject to a special district, the special district may acquire responsibility for, control of, or ownership of what has been designated a common area. The authority of the special district is superior to that of the Association.

COMMON PROPERTY IS "AS IS" ON ANY DAY - EVERY DAY.

5.5. ACCEPTANCE. Each owner, by accepting an interest in or title to a lot in Glenwyck, whether or not it is so expressed in the instrument of conveyance, acknowledges, understands, accepts, and agrees to each of the following statements:

(1) The common property and any improvements are acceptable to owner in its then-existing "**AS IS**" condition.

(2) During ownership of the lot, all aspects of common area improvements are subject to change, such as deterioration from normal wear and tear, and that the "**AS IS**" condition of common property at time of owner's sale may be different - possibly worse - than the "**AS IS**" condition at time of owner's purchase.

(3) The Association is authorized to make decisions pertaining to common property, including decisions about maintenance, repair, and replacement.

(4) The Association's maintenance of common property is continuous, regardless of changes in the Association's board of directors or management, including transfer of control from Declarant to the owners. Accordingly, an outgoing director, manager, or Declarant has no duty to pay for common property improvements as a condition of leaving office.

Unofficial Document

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

(5) A common area conveyed to the Association by or through the Declarant or by a third party with Declarant's approval is a ministerial task that does not require the Association's acceptance of title or condition, all of which are deemed to be accepted by the Association, "**AS IS**".

5.6. COMPONENTS. Common property may be improved or unimproved, and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. The common property of the Property consists of the following components on, within, or adjacent to the Property, even if located on a lot, land adjacent to the Property, or a public right-of-way:

(1) Any land described as common area in Appendix A of this Declaration, or in a supplemental declaration, and all improvements thereon.

(2) Any area shown on the plat as common area or an area to be maintained by the Association.

(3) Any land or interest in real property conveyed to the Association for use as a common area.

(4) The formal entrances to the Property, if any.

(5) Screening features (if any) along a street on a perimeter of the Property, to the extent that the Association has a right or duty to maintain a screening feature.

(6) The right-of-way of a street on the perimeter of the Property, to the extent the Association has a right or duty to maintain or regulate that portion of the right-of-way.

(7) The grounds between a street on the perimeter of the Property and the screening feature, if any, to the extent the Association has a right or duty to maintain or regulate that portion of the right-of-way.

(8) Landscaping on street islands (if any), to the extent it is not maintained by a public or quasi-public entity.

(9) Any modification, replacement, or addition to any of the above-described areas and improvements.

(10) Personal property owned by the Association, such as books and records, office equipment, supplies, and furniture.

5.7. LIMITED COMMON AREA. If the board determines it to be in the Association's best interest, the board may limit use of a portion of the common area to one or more lots for the sole and exclusive use of the lot owner, as a limited common area, whether or not the area is so designated on the plat, by license, lease, or other revocable agreement. Inherent in the limiting of a common area, maintenance of the limited common area becomes the responsibility of the lot owner to whom use is limited. For example, a common area that is difficult to access and maintain except via the adjoining house lot might be a candidate for limited common area. Similarly, the Association has the right, but not the duty, to accept maintenance responsibility for a nominal portion of a lot or an improvement thereon for which the Association is better positioned than the owner to access and maintain, such as the edge of a lot that is adjacent to a common area.

5.8. PERSONAL RESPONSIBILITY. Each owner, by accepting an interest in or title to a lot in Glenwyck, whether or not it is so expressed in the instrument of conveyance, and each resident of Glenwyck, by occupying a home in the Property, acknowledges, understands, and agrees to each of the following statements, for himself, the members of his household, and his and their guests:

(1) Each owner and resident agrees to be informed about and to comply with the published or posted common area rules of Glenwyck.

(2) The use and enjoyment of the Property's common areas involve risk of personal injury, risk of death, and risk of damage or loss to property, all of which risks are assumed by each person using the Property's common areas.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Copy

(3) Parents, guardians, hosts, caretakers, and supervisors are at all times responsible for the well being and safety of their children and guests in their use of the Property's common areas.

(4) The Association, Declarant, Builders, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of personal safety in or on the common areas of Glenwyck.

(5) The Association, Declarant, Builders, and their respective directors, officers, committees, agents, and employees have made no representations or warranties - verbal or written - relating to safety or lack of risks pertaining to the common areas of Glenwyck.

(6) Each owner and resident agrees to educate the members of his household and his and their guests about the risks, responsibilities, and releases from liability contained in this Article.

ARTICLE 6
ARCHITECTURAL COVENANTS & USE RESTRICTIONS

6.1. GENERAL PROVISIONS. Because the lots are part of a single community, this Declaration creates rights to oversee the design, use, and appearance of lots and homes in order to preserve and enhance the Property's value and to respond to the Architectural Reviewer's vision for the Property, as the vision evolves over time. The use and appearance of the Property are at all times subject to rules and restrictions contained in Governing Documents, such as this Declaration and the Owners Manual, and applicable law, as each may be amended and supplemented from time to time, and to future rules and restrictions adopted pursuant to this Declaration or applicable law.

6.1.1. Applicability. This Article pertains to visible (as defined below) additions and changes to a lot and to anything on the lot, such as the dwelling and fences. This Article purposefully distinguishes between vacant and improved lots because of the separation of approval authorities ~ the ARC has authority over improved lots, the Declarant or its appointed Architectural Reviewer has authority over vacant lots. If a provision of this Article or any Governing Document, such as the Owners Manual, is not clear as to its applicability, it will be construed to apply only to lots which have been used for residential purposes, and only to improvements which are visible additions or changes.

6.1.2. Improvement. The words "improved" and "improvement" do not have precise definitions and must be construed in light of the context in which used. "**Improved lot**" generally means a lot on which an approved dwelling has been constructed and completed, or a lot that is used for residential purposes in connection with the dwelling on the adjacent lot. "**Improvement**" has multiple meanings, such as (1) any item of construction (the house is an improvement on the lot) and (2) only a change or addition to an existing item of construction (the shutters are an improvement to the home's front facade).

BEAUTY IS IN THE EYE OF THE BEHOLDER.
THE PROPERTY'S BEHOLDER IS THE ARC.

6.1.3. Community Standard. As used in the Governing Documents, a term such as "**community standard**" or "**subdivision standard**" or "**neighborhood standard**" is an evolving flexible measure of the use and appearance of the Property as a pleasant and visually harmonious residential neighborhood. It requires compatibility, but not uniformity - harmony, but not sameness. The community standard is expected to change over time as materials, technologies, tastes, lifestyles, and values change, and as landscaping matures. Even though a community standard may be difficult to articulate, a violation of the community standard should be easy to identify as something unattractive, inappropriate, or otherwise unsuitable for the Property from the perspective of a reasonable person, taking into consideration prevailing public policy and community sensibilities. "Community standard" applies because - as a practical matter - the Governing Documents can not anticipate or dictate every possible use of a lot or dwelling.

6.1.4. Visibility & Context. As used in the Governing Documents, terms such as "**screened**" and "**visible**" are in relation to the view of an average person sitting in a passenger vehicle driving on a street, or the

UNOFFICIAL DOCUMENT

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

view of a person of average height standing flat-footed at least 20 feet away from the property line, as appropriate for the context. It does not pertain to a view from overhead or from a second floor window. Also, it must not require a person to strain to see the perceived violation. A perceived violation must be readily - easily - viewable, usually from afar, to be "visible" or "not screened" to be actionable. Depending on circumstances and location, partial or substantial compliance with an architectural requirement - rather than strict compliance - may be sufficient. The board may determine what constitutes a visible item or adequate screening on a case-by-case and location-by-location basis, for purposes of applying a particular rule. It is within the sole discretion of the ARC to determine whether a certain visible item in a particular location is sufficiently visible to constitute an actionable violation of a rule. For example, a violation on a lot near the Property's entrance - because of the lot's visibility - may be more actionable than the same violation on a lot in the back corner of the Property. Similarly, a violation on a home that is surrounded by substantial mature landscaping may be less noticeable, and hence less actionable, than the same violation on a lot with sparse landscaping.

6.1.5. Purposes. One purpose of this Article is to require that proposed visible additions and changes to a lot be subject to review, approval, and disapproval. Another purpose is to promote and ensure the level of taste, design, and quality by which improved lots in the Property are maintained, modified, and further improved over time. A third purpose is to prevent visible modifications on improved lots that may be considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements or the evolving architectural vision for the Property. A fourth purpose is to regulate the appearance of every aspect of proposed or existing visible improvements on and to an improved lot, including but not limited to replacement dwellings, additions, fences, landscaping, retaining walls, yard art, sidewalks and driveways.

6.1.6. Independent Requirements. Visible changes and additions to a lot must (1) have the ARC's prior written approval, (2) comply with applicable public codes and ordinances, (3) have a building permit issued by the appropriate local government, if applicable and if the type of improvement requires a permit, and (4) comply with the specifications and restrictions of the Declaration and Owners Manual, unless a waiver or variance has been granted. These four requirements are independent - one does not ensure or eliminate the need for another. If different sources of specifications address the same improvement, the source with the more stringent specification controls.

6.1.7. Vested Rights. As a general rule, an owner may rely on written approval from the Association - acting through the ARC or board, for as long as the approved item, improvement, or use, or its substantially equivalent replacement, exists and is adequately maintained. If the Association adopts new standards for the Property, such as a change of fence stain color, the owner of a previously approved item, improvement, or use is expected to incorporate the new standard in connection with maintenance or replacement of the item, improvement, or use.

OWNERS CAN MAKE SOME CHANGES WITHOUT ARC APPROVAL

6.2. ALLOWED ACTIVITIES. It is a high-wire balancing act to maintain the architectural integrity of the Property while allowing the owners to have a degree of autonomy over their yards and homes. The purpose of this Section is to carve-out certain appearance-related activities that may be performed by the owner without obtaining the prior approval of the ARC, and to inform the ARC that this Article and architectural control, in general, are not intended to regulate every action on every lot. The measure of subjective terms like "short-term," "temporary," "customary," and "reasonable" is determined on a case-by-case basis and must reflect the totality of the circumstances, such as the scope of the work, environmental conditions, and the availability of materials and labor. **This Section controls over anything to the contrary in this Article.**

6.2.1. Exemption for Temporary Conditions. To be exempt from ARC-approval, any of the following activities must be necessary, temporary, short-term, and not-reoccurring:

- Warranty work by a builder or contractor.
- Temporary treatments or repairs to damaged improvements pending permanent repairs.
- Temporary removal of fences in connection with a short-term project on the lot.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Copy

- Temporary use of unfenced yards and driveways for material storage or waste disposal in connection with a short-term project on the lot.

6.2.2. Exemption for Like-for-Like Activities. To be exempt from ARC-approval, any of the following activities must be substantially like-for-like in appearance, so there is not a noticeable significant change to visible parts of the lot or dwelling:

- Maintain, repair, or reconstruct the lot and dwelling or other improvements.
- Rebuild according to original or previously-approved plans and specifications.
- Repaint exteriors according to an ARC-approved color scheme.

6.3. OWNER'S DUTY. By accepting an interest in or title to a vacant or improved lot in Glenwyck, **each owner covenants to make no visible changes or additions to the owner's lot or to improvements on the lot without the Architectural Reviewer's prior written approval** ~ the ARC being the Architectural Reviewer for improved lots - **if the change or addition is visible and noticeably affects the appearance of improvements on the lot.** Also, each owner of a vacant or improved lot in Glenwyck, and each resident of Glenwyck, by occupying a home in the Property, acknowledges that the improvement, modification, appearance, maintenance, and use of the lot and home are regulated by the Governing Documents, in particular this Declaration and the Owners Manual. Each owner and resident further covenants to comply with and conform to the applicable rules and restrictions for the Property. Also, each owner and resident will follow the customary procedures for applying for an approval, waiver, or variance by the board or the ARC, as applicable, and will abide by the outcome. Each owner of a vacant lot will follow the customary procedures of the Architectural Reviewer for vacant lots.

6.4. DEFAULT-BASED DENIAL. The purpose of this Section is to give the Association leverage over an owner or lot in default by making certain privileges contingent on curing the default. This Section pertains to every owner and lot (other than Declarant and Declarant-owned lots) for which the assessment account is delinquent or the lot has an uncured violation that is visible from the street and which adversely affects the appearance of the lot, a status which is hereafter referred to being "**in default.**" On a case-by-case basis, tailored to the circumstances, the Association and Architectural Reviewer have the discretionary right, but not the duty, to disqualify or deny a request for a variance or for approval of a change affecting the use or appearance of a lot solely on the grounds that the requesting owner or the owner's lot is in default, provided the owner has received written notice of the default and a reasonable opportunity to cure same. A disqualification or denial based on this Section must state the reason for disqualification or denial and the action required to qualify the request for consideration. Curing a default does not guaranty that the owner's request will be approved when re-submitted. Anything to the contrary in this Declaration or any other Governing Document must be construed in light of the discretionary authority created by this Section.

6.5. SPECIFICATION SOURCES. Specifications for the construction of initial improvements on vacant lots are not published in this Declaration or in the Owners Manual, and may be part of a private agreement between Declarant and a Builder. The specifications contained in the Owners Manual were selected from the multitudes because of their potential applicability to the daily use of the improved lots and the expectation that owners may try to modify their houses, fences, and yards. Also, additional or fewer specifications or variations of the requirements in the Owners Manual may be included in restrictions that are specific to certain lots, a designated neighborhood, or a particular phase of the Property, and may be included in a supplemental declaration or amendment of annexation, by which a phase or section of real property is added to Glenwyck. This Section serves as notice of multiple sources of specifications pertaining to the initial construction or subsequent modification of improvements in Glenwyck.

6.6. OWNERS MANUAL. The initial rules and regulations for the use, maintenance, and appearance of lots are compiled as chapters of a single publication, the Owners Manual. The provisions of the Owners Manual regulate every improved lot in the Property and specifically pertain to (1) modification of an existing home and other improvements on an improved lot, (2) reconstruction of an existing home and other improvements on an improved lot, (3) additions to an existing home and other improvements on an improved lot, and (4) the use and appearance of an improved lot. Because it is not necessary to republish the entire Owners Manual with every change and supplement, over time the Owners Manual may consist of multiple documents. Also, a lot may be subject to additional or different specifications in a publicly recorded instrument to which particular lots are subject. This Section applies to all rules and regulations for the use, maintenance, and appearance of lot, without regard to how the rule is published or whether it references this Section or the Owners Manual. The placement of a rule or restriction in a particular chapter of the Owners Manual is not intended

UNOFFICIAL DOCUMENT

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

to limit the applicability of that rule or restriction. Therefore, no person - or the Association - should rely on a single chapter or section of the Owners Manual as the complete treatment of a topic. The entire Owners Manual, as amended or supplemented from time to time, must be consulted to determine whether and how a particular matter is addressed. In addition to the Owners Manual, a lot may be subject to additional or different specifications in a publicly recorded instrument to which a particular lot is subject. The background explanation provided in this Section may not be invoked by an owner as a justification for the owner's noncompliance.

6.6.1. Backstory. The original Governing Documents, including the Owners Manual, are drafted when the Property is raw land ~ before buildings, before residents, before Glenwyck becomes a neighborhood with a personality. Declarant imposes limits on what can be done with a home and yard to support the Build-Out and Sell-Out of new homes in the Property. Declarant also believes that the restrictions serve the long-term best interests of the community of owners.

6.6.2. Balancing Interests. Neighborhood appearance and quality of life may affect the value of a home, which is often an owner's largest investment. At the same time, a home is where real people live. In applying the Owners Manual, the board and the Architectural Reviewer are expected to balance the overall perspective of the Property and the collective needs of the community of owners with the rights of individual owners to use and enjoy their homes with a degree of autonomy. Similarly, owners may be required to temper their expectations. An owner who expects the Association to continually enforce every restriction against all lots to the nth degree may be disappointed. Similarly, an owner who expects to be able to do whatever he wants with his home and yard without suffering consequences may be disappointed. The "sweet spot" of community contentment is somewhere between the two extremes of no enforcement and constant strict enforcement.

FAIRNESS IS DESIRED & ASPIRED BUT NOT GUARANTEED

6.6.3. Authority for Flexibility. The original Governing Documents contain provisions that authorize the board, under certain circumstances, to tolerate violations, to grant variances, and to be flexible in its enforcement of the restrictions. That authority belongs to the board, in its sole discretion, acting in what it considers to be the best interests of the community of owners. Individual owners do not have corresponding rights under the Governing Documents to demand a waiver from the Association or to demand enforcement by the Association. Each owner is expected to honor the authority of the Association to enforce any restriction to which the owner and his lot are subject, and to accept that the board may use its discretion in enforcing the restrictions against owners and lots.

6.6.4. Changing Times. Over time, the Association may have reason to modify the restrictions or to change its interpretation or enforcement of the restrictions. Why? For a variety of reasons, such as to keep pace with changes in the values and lifestyles of residents, to address new technologies and materials, to reflect the Property's maturity, to eliminate restrictions that are more burdensome than beneficial, to respond to environmental or economic conditions, and to embrace changes of public policy and applicable law. Accordingly, some aspects of the Owners Manual will need to be changed from time to time. In the meantime, every provision of the Owners Manual is aspirational as well as enforceable.

6.7. ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee (the "**ARC**") is a committee of the Association. The ARC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ARC serve at the pleasure of the board and may be removed and replaced at the board's discretion. Members of the ARC need not be owners or residents. The board may serve as the ARC and may appoint directors to the ARC. The Association may hire professionals - such as architects, engineers, and design consultants - to serve on or to advise the ARC at a compensation determined by the board.

6.7.1. Limits on Liability. The ARC and each of its members has no liability for decisions made in good faith by the ARC, and which are not arbitrary or capricious. The ARC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ARC, (2) supervising construction for the owner's compliance with approved plans and specifications, or (3) the compliance of the owner's plans and specifications with governmental codes and ordinances, and public laws.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

6.7.2. Discretion. The ARC may exercise discretion with respect to taste, design, and all standards specified by the Governing Documents.

6.7.3. Variations. All lots are not similarly situated. One lot may be more visible than others because of its location, size, elevation, orientation, or landscaping. For example, a corner lot or a lot at the Property's entrance is typically more visible than an interior lot. The ARC may vary its interpretation and enforcement of specifications, use restrictions, and rules based, in part, on a lot's location or visibility - provided the ARC tries to treat similarly-situated lots or circumstances in like manner.

6.7.4. Appeal of ARC Decision. An owner may appeal to the board any decision by the ARC to deny the owner's application or to approve the owner's application only if certain changes are made. The owner must submit a written application for appeal to the board, with a copy to the ARC, within 60 days after the ARC's decision. The board may affirm, overrule, or modify the ARC's decision. If the board acts as the ARC, the owner may appeal to the board at an open board meeting or in executive session, the choice being solely at the discretion of the owner.

BEFORE CHANGING THE APPEARANCE OF YOUR LOT OR THE OUTSIDE OF YOUR HOME, APPLY FOR WRITTEN APPROVAL OF THE ARC.

6.8. ARC APPROVAL REQUIRED. Without ARC approval, a person may not re-construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to an improved lot, or to a vacant lot owned by a person other than Declarant or a Builder, if (1) it is expected to have an adverse affect on the general value or appearance of the neighborhood, or (2) it will be visible from a street or common area and it changes the appearance of the lot or dwelling. The ARC has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Without the ARC's prior written approval for a variance, alterations and additions to an improved lot, or to a vacant lot owned by a person other than Declarant or a Builder, must have the characteristics described in the Owners Manual. In case of conflict between the terms of this Article or the Owners Manual, and a restriction or guideline that pertains directly to the portion of the Property in which a lot is located, the more lot-specific restriction controls. The ARC may supplement this Article and the Owners Manual with interpretations, explanations, and adaptations. An owner should review the Association's architectural restrictions and requirements before planning or initiating visible changes, repairs, or replacements to his lot and dwelling.

6.9. APPLICATION FOR APPROVAL. To request architectural approval, an owner must make written application to the applicable Architectural Reviewer and submit plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the owner of an improved lot may but is not required to submit letters of support or non-opposition from owners of lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration or the Owners Manual for which a variance is sought. The Architectural Reviewer's response to the applicant must be in writing and may be similar to"Approved," "Approved with Conditions," "Denied," or "More Information Required." **ANY RESPONSE OTHER THAN "APPROVED" IS A DENIAL, EVEN IF "DENIED" IS NOT USED.**

6.9.1. No Deemed Variances. If the Architectural Reviewer approves an application for work that requires a variance, without granting the variance, the approval is void. Applicant is solely responsible for performing due diligence to identify any land use restriction that relates to the proposed work, such as (without limitation) plat notes, setbacks, easements, and specifications in the Owners Manual, and for providing that information to the Architectural Reviewer with the application. If the proposed work requires a variance, applicant must apply for a specific variance and may not perform any work unless the specific variance is granted in writing by the Architectural Reviewer. Applicant must provide the Architectural Reviewer with actual notice of the restriction for which a variance is required and may not assume that the Architectural Reviewer has complete knowledge of restrictions and limitations on applicant's lot. Constructive and inquiry notice to the Architectural Reviewer are not sufficient for purposes of this Section.

6.9.2. Written versus Verbal Response. In the era in which this Declaration is written, some forms of writing - such as text messages, tweets, and online chats and messengers - are substitutes for conversation. For purposes of this Section, all "writings" are not equal. To qualify as "**written approval**" the writing must have

© 2017. Sharon Reuler, P.C. All Rights Reserved.

certain **FORMALITIES**, such as (1) being in a form that can be easily preserved as a permanent record of the Association, (2) clearly identifying the lot and its owner, (3) referencing the application with enough detail to provide certainty about which application is being approved (or denied), and (4) citing the signer's authority for writing on behalf of the Architectural Reviewer. Any other communication - verbal or written - does not constitute architectural approval by the appropriate Architectural Reviewer, even if issued by an Association director or officer, a member of the ARC, the Association's manager, or Declarant.

VERBAL APPROVAL DOESN'T COUNT
~ FORMAL WRITTEN APPROVAL IS REQUIRED ~

6.9.3. Method of Submission. Electronic submission with digital files is permitted. If the submission is by paper, the applicant must submit two identical sets of plans and specifications - one set to be retained by the Architectural Reviewer, the other set to be returned to the applicant marked with the Architectural Reviewer's response.

6.9.4. No Approval Required. No approval is required for the "Allowed Activities" described above.

6.9.5. Building Permit. If the application is for work that requires a building permit from a governmental body, the ARC's approval is automatically and implicitly conditioned on the issuance of the appropriate permit. The ARC's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, issuance of a building permit does not ensure ARC approval.

6.9.6. Neighbor Input. The ARC may solicit comments on the application, such as from owners or residents of lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant are solely at the discretion of the ARC. The ARC is not required to respond to the commenters in ruling on the application.

6.9.7. Initial Variances for Vacant Lots. A lot does not come within the jurisdiction of the ARC until the initial improvements on a vacant lot have been completed. An aspect of an initial improvement that is contrary to this Declaration or the Owners Manual may have been granted a variance by the Architectural Reviewer for vacant lots.

6.10. TIME LIMITS. In approving an application, the Architectural Reviewer may specify maximum dates for starting and completing the proposed work, which dates may be tailored to the circumstances of the application and the nature of the proposed work. If the work has not commenced within 60 days after the specified start date, the approval is void and the owner must re-apply for approval. Once started, the work must be completed with due diligence. In the absence of time periods specified in the Architectural Reviewer's approval, the work must be started within 60 days from the date of application approval, and must be completed within 90 days from the date the work commences. In most cases, the commencement of work must be apparent at a site inspection and does not pertain to planning. The deadlines of this Section are subject to force majeure and may be extended if the approved work cannot be started or completed due to causes that are outside the control of the owner and its contractors and which could not be evaded through the exercise of due care, such as natural disasters. An approval automatically expires on the earlier of completion of the work for which approval was granted, or one year after date of approval. This Section does not apply to improvements made by Declarant or to the construction of new homes.

6.11. REASONABLE ACCOMMODATION FOR HANDICAP. To the extent required by applicable law and subject to the requirements of this Section, the Architectural Reviewer will accept an application for "reasonable accommodation" (within the context of Fair Housing Acts) by or for a person with a valid handicap that qualifies for protection under the Fair Housing Act. The Architectural Reviewer may require adequate documentation of the handicapped person's qualification for Fair Housing Act protection as a condition of reviewing the application. To the extent permitted by applicable law, the Architectural Reviewer may specify aspects of the reasonable accommodation that affect the appearance and value of the Property, and the right to choose an alternate method for the reasonable accommodation. No reasonable accommodation for a handicap is permitted on portions of the Property that are visible from a street or common area without the prior written approval of the Architectural Reviewer.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

6.12. ACCESSORY DWELLING UNIT. This Declaration is drafted in an era in which the concept of "accessory dwelling units" or "ADUs" is reaching the local market. No provision of any Governing Document may be construed or enforced in a way that penalizes or refuses to recognize a lot's ADU feature if the feature is allowed by the City and is built by Declarant or approved by the Architectural Reviewer. The existence or occupancy of an ADU on a single-family lot does not convert the single-family lot into a multi-family lot, and does not convert a single-family dwelling into a multi-family structure. Two or more entry doors on a single-family dwelling with an ADU is allowed. This Section recognizes "single-family" and "multi-family" as terms pertaining to governmental building codes, platting requirements, and zoning ordinances, not to a layman's use of the terms.

6.13. CO-ADJACENT LOT. This Section applies to Glenwyck as long as applicable law defines "adjacent lot" and "residential purpose" as it does in Property Code Sec. 209.015 in effect on the date of this Declaration. This Declaration, the Owners Manual, and the other Governing Documents are drafted with the expectation that every platted residential lot owned by a person other than Declarant will be improved with a dwelling, unless the lot is conveyed to the Association or to a Public Agency. This Section pertains to the atypical situation of a vacant lot (the "**Co-Adjacent Lot**") that is adjacent to a lot with a dwelling (the "**Dwelling Lot**"), and is used in conjunction with the Dwelling Lot, both lots having the same owner ~ a situation which is addressed by State law. Because there may be no Co-Adjacent Lot in the Property, this Declaration, the Owners Manual, and the other Governing Documents do not specifically address how provisions intended for lots improved with dwellings are to be applied to Co-Adjacent Lots. Therefore, notwithstanding anything to the contrary in a Governing Document, the following provisions apply. A Co-Adjacent Lot may be used by the owner of the Dwelling Lot only for "residential purposes" as defined by applicable law, or for any additional purpose permitted by the Architectural Reviewer. Notwithstanding provisions (if any) specific to vacant lots in the Property, a Co-Adjacent Lot is subject to the same assessment liability, at the same rate, as the Dwelling Lot with which it is paired. On a case-by-case basis and to the full extent permitted by applicable law, the Architectural Reviewer may establish and enforce additional or different criteria and specifications for every aspect of the use, maintenance, appearance, and improvement of the Co-Adjacent Lot, including (without limitation) screening, landscaping, and construction specifications. By owning a Dwelling Lot and a Co-Adjacent Lot, the owner acknowledges that (to the full extent permitted by applicable law) (1) this Section applies to the Co-Adjacent Lot and controls over any provision to the contrary elsewhere in the Governing Documents; (2) a Co-Adjacent Lot may not be used or improved without the prior written approval of the Architectural Reviewer; (3) in reviewing an application for uses or improvements on the Co-Adjacent Lot, the Architectural Reviewer may require additional information specific to the proposed use or improvement; (4) the Architectural Reviewer may establish lot-specific criteria and specifications that are different from or in addition to requirements for lots improved with dwellings, and tailored to the location and visibility of the Co-Adjacent Lot; and (5) the conditioned approval for the Co-Adjacent Lot may be in the form of a covenant agreement to be signed and acknowledged by the owner and by the Architectural Reviewer or the Association, and publicly recorded in Tarrant County, Texas.

6.14. VARIANCE. The board of the ARC, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance, other than the limited exceptions authorized by this Declaration or the Owners Manual.

GLENWYCK HAS RULES

6.15. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association has the right to adopt, amend, repeal, and enforce reasonable rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. **The right to make rules and to regulate includes the right to prohibit or to restrict.** A right or prohibition established by a Governing Document or applicable law may not be abridged or extinguished under this Section except to the extent (if any) permitted by the establishment authority. In addition to the restrictions contained in this Article and the Owners Manual, each lot is owned and occupied subject to the right of the board to establish rules, and penalties for infractions thereof, governing:

(1) Use of common areas.
(2) Hazardous, illegal, or annoying materials or activities on the Property.
(3) The use of Property-wide services provided through the Association.
(4) The consumption of utilities billed to the Association.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Document

(5) The use, maintenance, and appearance of exteriors of dwellings and lots.
(6) Landscaping and maintenance of yards.
(7) The occupancy and leasing of dwellings.
(8) The business use of dwellings, including short term rentals.
(9) Animals.
(10) Vehicles.
(11) Disposition of trash and control of vermin, termites, and pests.
(12) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for residents.

6.16. ASSOCIATION'S RIGHT TO POST SIGNS. The Association may post signs on the Property and on the Association's website (if any). If customary and if done or authorized by the Association, rules may be published on signs posted or painted on the Property, or communicated to owners as temporary or seasonal rules that are circumstance-based. Each resident must comply with any rules and signs posted from time to time on the Property by the Association, such as those regulating use of common areas. Also, each resident must comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the Property. The Association may, but is not required to, recite the text of a sign in a publicly recorded document. In the event of a discrepancy or conflict between a rule that is posted on the Property by the Association and a rule that is in a publicly recorded Governing Document, the posted rule controls if it is posted in a place and manner that is appropriate for the conduct to which it relates.

6.17. SUBJECTIVE STANDARDS. Standards for some rules and restrictions are inherently subjective, such as what is unattractive or offensive. The Association is not required to honor every resident's individual tolerances. The Use Restrictions, in particular, are not intended to shield a hypersensitive resident from actions or circumstances that would be tolerable to a typical resident of the Property. The Association may refrain from acting on a perceived violation unless the board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one resident to enforce rules and restrictions against another resident. Residents are expected to deal directly and peaceably with each other about their differences.

6.18. LIMITS TO OWNER'S RIGHTS. No right granted to an owner by this Article, the Owners Manual, or any provision of any Governing Document is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the neighborhood. This Article, the Owners Manual, and the other Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, if the rules allow an owner to post a for-sale sign, such a right is not permission to mount the sign on the chimney and illuminate it with pulsating neon lights. The rights granted by this Article, the Owners Manual, and the other Governing Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

6.19. LIMITED ROLE OF DECLARANT. Prior to Build-Out, Declarant may identify to the ARC certain locations, uses, or modifications that must not be approved by the ARC without the prior written approval of Declarant or Declarant's designee to prevent a potentially adverse affect on the value or marketing of vacant lots and new homes in the Property. To illustrate, Declarant may require heightened scrutiny for improved lots near a subdivision entrance, along a main thoroughfare, near common areas, or across the street from a model home.

ARTICLE 7
ASSOCIATION OPERATIONS

7.1. MANDATORY MEMBERSHIP. By acquiring an ownership interest in a lot, a person automatically becomes a member of the Association ~ a mandatory membership Texas property owners association. Membership in the Association is not optional, and may not be severed from ownership of a lot. Conveyance of a lot automatically conveys the Association membership that is appurtenant to the lot, subject to the right of the Association to require satisfactory proof of conveyance as a condition for changing its membership records. This Section is modified by the Declarant Class Member provision of Appendix C. **MEMBERSHIP IN THE ASSOCIATION IS NOT OPTIONAL.**

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Copy

7.2. THE ASSOCIATION. The existence and legitimacy of the Association are derived from this Declaration and the Bylaws of the Association.

7.2.1. Type. The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association is incorporated, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

7.2.2. Applicability. The Association is subject to the Texas Business Organizations Code ("**TBOC**"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 - the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Unincorporated Nonprofit Association Act.

7.2.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Glenwyck Owners Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of Tarrant County, Texas, as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Governing Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

7.2.4. Duties. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and, as applicable, an unincorporated nonprofit association or a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

7.2.5. Duration. The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of Tarrant County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of Tarrant County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

7.3. BOARD. The Association is governed by a board of directors. Unless the Governing Documents expressly reserve a right, action, or decision to another party, such as the owners or Declarant, the board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its board of directors." The board of directors may authorize or direct officers of the Association, who serve at the pleasure of the board, to implement its decisions.

THE ASSOCIATION ACTS THROUGH ITS BOARD OF DIRECTORS.

7.4. MEMBERS & VOTING. After Sell-Out, the Association will have one class of members - the Homeowner Class. Membership is automatic, mandatory, appurtenant to ownership of a lot, and terminates when the member is divested of his ownership interest in the lot to which it is tied and from which it may not be separated. If a lot is owned by more than one person, the co-owners share the membership and decide for themselves how it will be exercised. The board may require satisfactory evidence of transfer of ownership before a purported owner is recognized by the Association as a member. The one vote appurtenant to each lot is indivisible. All votes are uniform in weight, regardless of the value, size, or location of the lot or its improvements. Cumulative voting is not allowed.

7.5. HEAD COUNTS. A reference in a Governing Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots. In a different context, to make a point,

© 2017. Sharon Reuler, P.C. All Rights Reserved.

a representative of the Association who appears before a tribunal on behalf of the Association may properly refer to members of the Association as "citizens" and "voters" in the jurisdiction in which the Property is located, without evidence of citizenship or voter registrations to substantiate the reference. In that context, the actual number of individual owners may be used.

7.6. DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the board, unless the Governing Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Governing Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (1) at a meeting by owners of at least a majority of the lots that are represented at the meeting, provided notice of the meeting was given to an owner of each lot, or (2) in writing by owners of at least a majority of all lots, provided the opportunity to approve or disapprove was given to an owner of each lot. As long as the Declarant Class exists, Declarant has the right to veto any decision made by the Association which Declarant reasonably expects to have an adverse affect on the rights and interests of Declarant or Builders in completing the development, construction, and marketing of the Property.

7.7. MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

7.8. ARRANGEMENTS WITH OTHER ASSOCIATIONS. If deemed by the board to be in the best interest of the Association, the Association may participate in one or more contractual arrangements with other property owners associations or with owners or operators of nearby property for the benefit of Association members, such as to consolidate services and reduce costs. The board may act unilaterally to negotiate, execute, modify, or terminate such contractual arrangements. Common funds of the Association may be used to pay the Association's share of any such contractual arrangement.

7.9. COMMUNICATIONS. Drafted in an era of rapidly changing communication technologies, this Declaration does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary, or which are permitted by applicable law. For example, if the Association is required by the Governing Documents or applicable law to make information available to owners of all lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the lots. Also, the Association may employ multiple methods of communicating with owners and residents.

7.10. BOOKS & RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. The Association will make its books and records available to members, on request, for inspection and copying pursuant to the requirements of applicable law.

7.11. INDEMNIFICATION. The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

7.12. INSURANCE. All insurance affecting the Property is governed by the provisions of this Section, with which the board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association

© 2017. Sharon Reuler, P.C. All Rights Reserved.

must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each owner irrevocably appoints the Association as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

7.12.1. General Features. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

7.12.2. Property. To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any lot owned by the Association.

7.12.3. General Liability. To the extent it is reasonably available, the Association will maintain a commercial general liability insurance policy over the common areas - expressly excluding the liability of each owner and resident within his lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an owner's claim because of negligent acts of the Association or other owners.

7.12.4. Directors & Officers Liability. To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

7.12.5. Other Coverages. The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by a National Lender for planned unit developments as long as the National Lender is a mortgagee or an owner.

7.13. OBLIGATIONS OF OWNERS. This Section supplements and does not replace the duties, responsibilities, and obligations of owners in Glenwyck that are communicated throughout the Governing Documents.

7.13.1. General Obligations. Without limiting the obligations of owners under the Governing Documents and pursuant to applicable law, each owner will:

(1) Refrain from interfering with the Association's performance of its responsibilities, such as maintenance of the common areas.

(2) Maintain effective contact information with the Association, and promptly notify the Association of changes in the owner's contact information in a manner that brings attention to the changed information.

(3) Pay assessments properly levied by the Association against the owner or his lot, and will pay reoccurring scheduled assessments, such as regular assessments, without demand by the Association.

(4) Pay the applicable transfer-related fees and contributions at time of closing.

(5) Comply with the Governing Documents as amended and published from time to time.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Copy

(6) Pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees.

(7) Be liable to the Association for violations of the Governing Documents by the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance.

7.13.2. Owner's Responsibility for Insurance. Each owner will obtain and maintain property insurance on all insurable improvements on his lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each owner will obtain and maintain general liability insurance on his lot. Each owner and resident is solely responsible for insuring his personal property in his dwelling and on the lot, including furnishings and vehicles. If circumstances warrant, the board may establish additional minimum insurance requirements for owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. This Subsection may not be construed to create a duty for the Association to inquire about an owner's insurance coverage or to enforce this Subsection.

7.14. DECLARANT MAY ACT FOR BOARD. During the Declarant Control Period, any act that the board is permitted to take for or on behalf of the Association may be performed by Declarant acting in the name of Declarant. Any decision or act made by the board during the Declarant Control Period which is challenged for procedural issues may be ratified and validated by Declarant, even after the Declarant Control Period. This Section is in addition to rights reserved by Declarant elsewhere in this Declaration.

ARTICLE 8
COVENANT FOR ASSESSMENTS

8.1. GENERAL. The words and concepts used in the Sections of this Declaration that pertain to assessments, reserves, and the financial affairs of the Association ("**money-related**") are intended to have their ordinary meanings, and are not intended to be "terms of art" that have meanings specific to fields such as taxation, accounting, and finance. Any aspect of the money-related Sections of this Declaration that conflicts with an applicable regulation or ruling from the Internal Revenue Commission is unenforceable or must be construed in a way that does not conflict.

8.2. BOARD DISCRETION. By acquiring an ownership interest in a lot, **each owner acknowledges that the board may use its sole discretion** in exercising the rights of the Association and of the board under this Article, such as decisions regarding reserve funds, and including without limitation the interpretation and implementation of every provision of this Article. If made in good faith, a board decision regarding any money-related matter is final. Because reasonable people may disagree about the intent, scope, and effect of certain provisions of this Article, the board is hereby authorized to adopt one or more resolutions or policies to interpret or implement any provision or right contained in this Article, and also has the right to amend or restate, from time to time, any such resolution or policy. To make informed money-related decisions that are mindful of potential tax consequences to the Association, the board may, from time to time, obtain the counsel of accounting, legal, banking, and investment professionals (as appropriate).

IF YOU OWN A HOME IN GLENWYCK,
YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.

8.3. PERSONAL OBLIGATION. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's obligation is not subject to offset by the owner,

© 2017. Sharon Reuler, P.C. All Rights Reserved.

nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

8.4. USES OF ASSESSMENTS. The Association will use its common funds (typically assessment income and reserves) **for the general purposes of preserving and enhancing the Property, and for the common benefit of owners and residents**, including but not limited to maintenance of real and personal property, management and operation of the Association, any expense reasonably related to the purposes for which the Property was developed, and any expense permitted or required by the Governing Documents or by applicable laws and governmental regulations. If made in good faith, the board's decision with respect to the use of common funds is final. This Section does not attempt to identify every possible use of common funds, nor to create a duty for the Association to provide the illustrated uses. The Association's common funds may be used for any expense which, in the opinion of the board, is **necessary or desirable for the operation, maintenance, preservation, enhancement, and beautification of the Property, or for the general benefit of owners and residents**, such as (by way of illustration but not limitation) the following:

(1) Maintenance, repair, and replacement, as necessary, of the common property.

(2) Utilities billed to the Association, if any.

(3) Services billed to the Association and available to all lots, if any.

(4) Taxes on property owned by the Association (if any), franchise taxes, and the Association's income taxes.

(5) Management, legal, accounting, auditing, and professional fees for services to the Association.

(6) Costs of operating the Association, such as website, internet, telephone, postage, office supplies, printing, meeting expenses.

(7) Activities that promote the Property and the Association to the community at large, as well as activities that contribute to communications between the Association and its members and among the members, such as social and recreational functions, websites, and social media services and subscriptions.

(8) Educational opportunities of benefit to the Association.

(9) Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.

(10) Contributions to reserve funds, savings accounts, and other permitted accounts of the Association.

(11) Performance of a written contract, if any, between the Association and a special district, local government, or neighboring property owner or owners association, such as (without limitation) the Stormwater Facility Maintenance Agreement, recorded on May 15, 2017, as Document No. D217107217, Real Property Records, Tarrant County, Texas.

(12) Costs of performing the Association's required and discretionary functions under this Declaration, the other Governing Documents, and applicable law, and any expense which the Association is required to pay by law or the Governing Documents.

(13) Costs of enforcing the Governing Documents.

(14) Acquisition and construction of common property, consistent with applicable sections of the Internal Revenue Code, and subject to the Betterments Section below.

8.5. ANNUAL BUDGET. The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, estimated contributions to reserve funds, and a projection for uncollected receivables. Estimated expenses for the year typically include common expenses

Official Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

related to the reoccurring, periodic, and anticipated responsibilities of the Association. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will make the detailed budget available to an owner upon request.

8.6. SURPLUS & SHORTFALL. The annual budget being an estimate of income and expenses, almost every year will result in either a shortage or surplus of income over expenses. The purpose of this Section is to clarify that the board is authorized to deal with budget surpluses and shortfalls. Words used in this Section are not intended to have meanings specific to fields such as taxation, accounting, and insurance.

8.6.1. Shortfall. If during the course of a year the board determines that the Association's actual income may be insufficient to cover the actual amount of budgeted common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. The Association is not prohibited by this Declaration from transferring money from its reserve accounts to cover an operating shortfall or to respond to an emergency.

8.6.2. Surplus. Being a nonprofit entity does not prohibit the Association from acquiring a surplus of income over expenses. If during the course of a year the board determines that the Association's income is expected to exceed the common expenses that are budgeted for the remainder of the year, the board may determine one or more uses for the excess income by any means that benefits the Property, owners, and residents.

8.6.3. Decisions for IRS. By acquiring an ownership interest in a lot, each member of the Association instructs the Association to act through the board in making decisions and IRS elections that are available to the Association as a tax-paying entity, such as the annual election permitted by IRS Revenue Ruling 70-604. Decisions and IRS elections by the board may be ratified or reversed by a vote of the members.

8.7. BETTERMENTS. The purpose of this Section is to distinguish between improvements to common property that may be authorized unilaterally by the board in its sole discretion, and improvements to common property that must have the prior approval of owners in addition to the board. Words used in this Section are not intended to have meanings specific to fields such as taxation, accounting, and insurance.

8.7.1. Maintenance Improvements. The board has sole authority and discretion for "**Maintenance Improvements**," being improvements of real and personal common property that are within the scope of maintenance, repair, and replacement, regardless of the cost of the improvement. As used in this Section, "**maintenance, repair, and replacement**" of real and personal common property means substitutions, upgrades, additions, improvements, enhancements, and even removal which are required or recommended (1) to reduce future maintenance duties or costs, (2) to reduce liability, (3) to respond to an emergency or to prevent additional damage, (4) to take advantage of advancements in technology, systems, or materials, (5) to preserve the condition of common property, (6) to improve the appearance of common property, (7) to comply with laws and ordinances, or (8) to conform to changes in community standards.

8.7.2. Betterment Improvements. A **Betterment Improvement** is an improvement of real or personal common property that is not a Maintenance Improvement. Subject to the exception below for Nominal Betterments, common funds from any source (such as assessment, budget surplus, reserves, or bank loan) may not be spent on a Betterment Improvement without the prior approval of both the board and owners representing at least two-thirds of the lots represented in person or by proxy at a meeting of the Association (at which a quorum is attained) called for the purpose of approving the Betterment Improvement. If the requisite approvals were obtained for a proposed Betterment Improvement in connection with establishing a discretionary reserve fund or special assessment dedicated to the Betterment Improvement, the prior approval also pertains to expending the discretionary reserve fund or special assessment on the dedicated Betterment Improvement.

8.7.3. Nominal Betterments. The board has sole authority and discretion for **Nominal Betterments**, being Betterment Improvements of real and personal common property that, in the sole discretion of the board, meet all of the three below-listed criteria. A determination of "significant increase" by the board is a proper exercise of its discretionary authority and is presumed to be reasonable. The board may develop guidelines for such determinations. Adding a grove of trees to an open space is an example of a Nominal Betterment. The criteria for a Nominal Betterment are:

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

(1) The cost of the Betterment Improvement is less than five percent of the Association's annual operating budget.

(2) The Betterment Improvement is not expected to significantly increase the Association's liability.

(3) The Betterment Improvement is not expected to significantly increase the Association's responsibility and financial obligation for operation, insurance, maintenance, repairs, or replacement.

8.8. OWNERS' CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners of at least two-thirds of the lots. In addition to other rights granted to owners by this Declaration, owners have the following powers and controls over the Association's budget:

8.8.1. Veto Increased Dues. At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless owners of at least a majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last approved budget will continue in effect until a revised budget is approved.

8.8.2. Veto Special Assessment. At least 30 days prior to the effective date of a special assessment, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment. The special assessment will automatically become effective unless owners of at least majority of the lots disapprove the special assessment by petition or at a meeting of the Association.

8.9. TYPES OF ASSESSMENTS. There are 4 types of assessments that may be levied by the Association: Regular, Special, Individual, and Deficiency.

8.9.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined

8.9.2. Special Assessments. The board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the owners, unless this Declaration so stipulates.

8.9.3. Individual Assessments. In addition to regular and special assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Governing Documents; fines for violations of the Governing Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-lot basis; and "pass through" expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

8.9.4. Deficiency Assessments. The board may levy a deficiency assessment against all lots for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

8.10. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling, subject to the exemption for Declarant provided below and in Appendix C. Unplatted portions of the Property, if any, are not subject to assessment.

8.11. DUE DATE. The board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied, unless a different due

Official Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

date is established by the board. (A due date for an assessment is independent of the dates on which the Association's fiscal year starts and ends.) If the board changes the regular assessment due date, the Association may levy a supplemental regular assessment if needed to bridge a gap in the Association's income stream between the old and new due dates. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

8.12. DECLARANT EXEMPTION. Declarant's obligation for common expenses and exemption from assessments is described in Appendix C attached hereto. Unless Appendix C creates an affirmative assessment obligation for Declarant, every vacant lot and every improved lot owned by Declarant, by an affiliate of Declarant, or by an owner who is under contract to sell the lot to Declarant, is exempt from assessment by the Association.

8.13. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association has the right to borrow money, subject to (1) the ability of the Association to repay the borrowed funds from assessments, (2) approval by the board, and (3) the approval or consent of either (a) owners of at least a majority of the lots, or (b) if a meeting of the Association is called for the purpose of approving the loan, and if a quorum is attained, then owners of at least two-thirds of the lots which are represented (in person or by proxy) at the meeting may approve the loan, even though they may comprise less than the number of owners required for the quorum. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder. This Section does not apply to loans between accounts of the Association, or loans between the Association and Declarant.

8.14. LIMITATIONS OF INTEREST. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

8.15. EFFECT OF NONPAYMENT OF ASSESSMENTS. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

8.15.1. Interest. Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed 10 percent per annum. If the board fails to establish a rate, the rate is 10 percent per annum. On a delinquent account, the Association may charge interest or late fees, but not both.

TO AVOID PENALTIES, PLEASE PAY ASSESSMENTS TIMELY AND IN FULL.

8.15.2. Late Fees. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time. On any delinquent account, the Association may charge interest or late fees, but not both.

8.15.3. Costs of Collection. The owner of a lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

8.15.4. Acceleration. If an owner defaults in paying an assessment that is payable in installments, the Association may terminate the owner's use of installment payments and declare the entire unpaid balance due and payable in a lump sum by giving the defaulting owner a written notice of default and intent to accelerate in the same manner as mortgage lenders customarily use for residential mortgage loan defaults in Texas.

8.15.5. Money Judgment. The Association may file suit seeking a money judgment against an owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

8.15.6. Notice to Mortgagee. The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

8.15.7. Foreclosure of Assessment Lien. As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

8.15.8. Application of Payments. The Association will accept partial payments, but may adopt a policy for returning partial payments with words of limitation to which the Association has not agreed. Payments received for the lot's account will be applied according to the requirements of applicable law.

ARTICLE 9
RESERVE FUNDS

9.1. GENERAL. Generally, the funds of the Association are in either operating funds or reserve funds. From time to time, and as needed, the Association may establish any number of reserve funds for different purposes, provided each purpose benefits the Property and its owners and residents. Duties imposed on the Association or the board by this Section are voluntary during the Declarant Control Period, and do not become obligatory until the first fiscal year after the end of the Declarant Control Period. Because common area improvements are relatively modest, the application of this Article is discretionary with the board.

9.1.1. Authority. The Association's reserve funds may not be placed in accounts other than no-risk fully-insured accounts, except pursuant to - and in close adherence with - an investment policy adopted by the board. To be effective, an investment policy must be approved and signed by all the directors, or by a majority of the directors and all three members of an advisory committee of disinterested owners appointed by the board for the purpose of considering and approving the investment policy. Although not required, review of the investment policy at least once every three years by the board and the above-referenced advisory committee is recommended.

9.1.2. Sources. Typically, reserve accounts are funded by monies paid by owners other than Declarant, who has no duty to contribute to reserves. Owners' contributions may be in the form of initial contributions at time of purchase, special assessments, budgetary surpluses, or set-asides from regular assessments.

9.1.3. Non-Reimbursable. By acquiring an ownership interest in a lot, each owner acknowledges that the Association's reserve accounts are not subject to partition and are not a source of reimbursement to the owner for monies contributed by the owner during the period of lot ownership. This may not be construed to prevent the buyer and seller of a lot from negotiating reserve contributions between themselves.

9.2. REPAIR & REPLACEMENT RESERVES. Within one year after the end of the Declarant Control Period, the Association will establish, maintain, and accumulate Repair & Replacement Reserves (**"R&R Reserves"**) for repair and replacement of some (if not all) improvements in the common area and components of common property. Within one year after the end of the Declarant Control Period, and periodically thereafter, the board elected by the owners will adopt a replacement reserve schedule as the basis for the Association's R&R Reserves.

9.3. OPERATIONS RESERVES. The Association may establish, maintain, and accumulate operations reserves, at a level determined by the board, to cover expenses such as the cost of operational or maintenance emergencies or contingencies. Also, operations reserves may be used by the Association to cover fluctuations and shortages in operating income.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Copy

9.4. DISCRETIONARY RESERVES. The board may establish, maintain, and accumulate as many additional types of reserve funds as it desires, such as "Special Future Projects." As a general rule, the Association should endeavor to adequately fund the R&R Reserve fund before funding one or more discretionary reserve accounts.

9.5. DECLARANT EXEMPTION. Declarant's exemption from reserve contributions is described in Appendix C attached hereto. By acquiring an ownership interest in a lot, each owner acknowledges that Declarant and its affiliates are not obligated to contribute to the Association's reserve funds, and that during the Declarant Control Period the Association is not obligated to fund reserves, even if shown on a build-out budget as a category of future expense.

ARTICLE 10
ASSESSMENT LIEN

10.1. CREATION & PERFECTION OF LIEN. The recording of this Declaration creates the Association's continuing assessment lien on every lot in the Property to secure the payment of assessments levied or to be levied by the Association. This publicly recorded Declaration constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title is subject to the Association's continuing lien, which may secure unpaid assessments attributable to a period prior to the date he purchased his lot.

Yes, the HOA *can* foreclose!
If you fail to pay assessments to the Association, you may lose title to your home if the Association forecloses its assessment lien against your lot.

10.2. LIEN SUPERIOR TO HOMESTEAD. Because this Declaration is recorded before the instrument by which an owner takes title to a lot, the assessment lien hereby created is superior to any homestead right acquired in the future by a lot owner. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, acknowledges that the Association's assessment lien is superior to the owner's claim of homestead, if applicable.

10.3. OTHER SUPERIORITIES. In addition to a claim of homestead, the assessment lien created by this Declaration is also superior to all other liens and encumbrances on a lot, except only for (1) real property taxes and assessments levied by governmental and quasi-governmental authorities, (2) a deed of trust or vendor's lien recorded against land before the land became subject to this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original improvements on a lot, and (4) a purchase money vendor's lien or purchase money deed of trust lien recorded before the date on which the delinquent assessment became due. The Association may voluntarily subordinate its assessment lien to an otherwise-inferior lien, from time to time. However, the lien created by this Declaration can not and may not be released as to a lot without withdrawing the lot from the effect of this Declaration. Any instrument that purports to "release" the Association's assessment lien, even if executed by the Association, will be construed, depending on the circumstances, as either a subordination of the assessment lien as to future assessments on the lot, or as a waiver of Association's superior claim against the lot for delinquent assessments.

10.4. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner, and does not extinguish the Association's lien for assessments that become due after the sale. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

10.5. NOTICE AND RELEASE OF NOTICE. Although this Declaration constitutes perfection of its lien, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Tarrant County, Texas. If the debt is cured after a notice has been recorded, the Association will publicly record a release of the notice within 60 days after cure, or within 60 days after receiving the owner's written request. Although the owner is liable to the Association for reimbursement of release expenses incurred by the Association, the Association may not require prepayment as a condition of the release.

Unofficial Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

10.6. POWER OF SALE. By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

10.7. FORECLOSURE OF LIEN. Foreclosure of the Association's assessment lien - and all prerequisite procedures - must comply with at least the minimum requirements of applicable law for foreclosures, in general, and for foreclosures by property owners associations, in particular. To the extent permitted by law, the assessment lien may be foreclosed by judicial or nonjudicial methods. A nonjudicial foreclosure requires a court order pursuant to the expedited foreclosure process required by Chapter 209 of the Texas Property Code, and must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the assessment lien if the debt consists solely of interest, late fees, fines, a claim for reimbursement of attorney's fees incurred by the Association, or any charge prohibited by applicable law as the sole basis of a foreclosure action.

ARTICLE 11
ENFORCING THE DOCUMENTS

11.1. RIGHT TO ENFORCE. The Association and each owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed on the Property, on the owners, or on the Association by the Governing Documents or by applicable law. Failure by the Association or by any owner to enforce a provision of the Governing Documents or applicable public law is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Governing Documents at any time.

11.2. BOARD DISCRETION. The board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

11.3. NOT LACHES. Because the value of consistency to the community may not be apparent when a small number of variances are granted or a small number of violations are tolerated, the Association and the Architectural Reviewer, as appropriate, have the continuing and perpetual right to enforce the provisions of the Governing Documents against future violations, even though past violations are tolerated or affirmatively approved.

Although published in black ink on white paper,
RULES ARE NOT "BLACK & WHITE".

11.4. CONSISTENCY BY CIRCUMSTANCE. The board may vary its interpretation, application, and enforcement by circumstance, provided (1) the board establishes a rational and reasonable basis for circumstantial enforcement, and (2) the board diligently tries to be consistent in dealing with similar circumstances. To illustrate, the Association may decide that circumstances warrant different procedures for collecting delinquent assessments from owners who do not live in the Property, or are selling their homes, or are temporarily unemployed, or are in bankruptcy, or are deceased. That is permitted as long as the board is consistent about dealing with owners who are similarly-situated, meaning they share a category - such as those who are temporarily unemployed. Similarly, there may be a basis for enforcing a construction specification or use restriction because of a particular circumstance, such as more rigorous enforcement for

Unofficial Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

lots that are highly visible because of their prominent location, such as at the subdivision entrance, versus lots that have a less visible or less prominent location. Such distinctions are valid if there is a rational basis and consistent application.

11.5. AFTER-THE-FACT APPROVAL. This Section pertains to any action by an owner that requires prior written approval under the Governing Documents, such as (without limitation) a change of use or appearance. If an owner applies for approval of an action after having initiated or completed the action, the application cannot be denied solely because it was not timely submitted, if the action would have been approved, in the reasonable exercise of the authority's discretionary powers, if the application had been submitted timely. A written approval issued after the action is started or completed may not be construed as a waiver of the duty of owners to obtain prior written approval when required by a Governing Document, nor as an abdication of authority over actions that are regulated by the Governing Documents.

11.6. COSTS OF ENFORCEMENT. The Association may use common funds to exercise its rights and remedies for enforcing the Governing Documents, including funds contributed by the owner against whom enforcement is sought, subject to limitations for funding litigation in the Dispute Resolution Article. Costs incurred by the Association for curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce a provision of a Governing Document, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of a Governing Document or the restraint of a violation of a Governing Document, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

11.7. NOTICE AND HEARING. Before the Association may exercise certain of its remedies for a violation of the Governing Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

STATE LAW APPLIES
to many of the Association's enforcement rights and remedies.

11.8. REMEDIES. The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by applicable law, the Association has the following right to enforce the Governing Documents, subject to applicable notice and hearing requirements (if any):

11.8.1. Nuisance. The result of every act or omission that violates any provision of a Governing Document is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

11.8.2. Fine. The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Governing Documents. As a remedy, fines may be used to obtain compliance with an ongoing violation or a violation that is likely to be repeated. Fines may not be used after-the-fact as punishment for a spot violation that is over and is not likely to be repeated.

11.8.3. Suspension. The Association may suspend the right of owners and residents to use common areas for any period during which the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

11.8.4. Self-Help. The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any improvement, thing, animal, person, vehicle, or condition that violates a Governing Document. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. The Association may levy its costs of abatement against the lot and

© 2017. Sharon Reuler, P.C. All Rights Reserved.

owner as an individual assessment. The Association will make reasonable efforts to give the violating owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the owner. Prior notice is not required (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) to remove any other violative item or to abate any other violative condition that is easily removed or abated and that is considered a nuisance, dangerous, health hazard, or an eyesore to the neighborhood. The Association may not use this Section as authority to enter a locked or occupied dwelling without the prior consent of the lot owner.

11.8.5. Suit. Failure to comply with the Governing Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

ARTICLE 12
MAINTENANCE AND REPAIR OBLIGATIONS

12.1. ASSOCIATION MAINTAINS. The Association must adequately maintain common areas, typically using preventative maintenance, routine maintenance, and corrective maintenance in combinations that evolve as improvements age, conditions change, and technologies advance. The Association's maintenance obligations are discharged when and how the board deems appropriate. Board decisions about the type and timing of maintenance and repairs may depend on a variety of factors, such as the availability of materials, manpower, and money. Even if it were attainable, perfect maintenance is not the standard to which the Association is held.

12.1.1. Required Maintenance. Except as delegated, the Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots, in public rights of way, or in common areas.

(1) The common areas.

(2) Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association.

(3) Any area, item, easement, or service, whether located within or outside the Property, the responsibility for which is assigned to the Association by law, ordinance, court order, a governmental entity, an agreement to which the Association is a party, this Declaration, the plat, or any other publicly recorded document to which the Property is subject.

12.1.2. Required by City. As reported in Article 2, the Association has maintenance duties under the Stormwater Facility Maintenance Agreement, recorded on May 15, 2017, as Document No. D217107217, Real Property Records, Tarrant County, Texas. The Agreement's exhibits include a maintenance plan and checklist. The Association is advised to confer with the City if questions arise about the Association's responsibility.

12.1.3. Discretionary Maintenance. The Association may, but is not required to, use common funds to maintain property adjacent to or near Glenwyck if maintenance of same is deemed by the board in its sole discretion to be in the best interests of the Association, and if not prohibited by the owner or operator of said property, such as litter removal from an adjacent public right-of-way (by way of example only).

12.1.4. Delegated Maintenance. The Association may permanently or temporarily delegate or assign a maintenance responsibility to any entity or person who accepts the assignment in a publicly recorded document. Acceptance may be deemed by acquisition of property that is burdened with the assignment. If the assignee fails or refuses to maintain the property to the standard required for or by the Association, the Association may perform such maintenance at the expense of the assignee, after giving the assignee prior written notice and an opportunity to cure the default.

12.1.5. Need for Maintenance. The Association encourages residents to report common area items that need repair or replacement. A reported item that is not immediately remedied may be scheduled for repair at a time or under conditions that are cost-effective for the Association.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

12.2. OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Owners Manual and the architectural control requirements and restrictions of this Declaration:

12.2.1. Maintenance. Each owner, at the owner's expense, must maintain all portions of the lot and all improvements on the lot, such as (if any, without limitation) the dwelling, fences, sidewalks, driveways, drainage features, grounds, landscaping, and appurtenant rights-of-way. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to maintain his lot and its improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

12.2.2. Avoid Damage. An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

12.2.3. Responsible for Damage. An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas or the property of another owner.

You have a legal duty to maintain your home and yard.

12.3. OWNER'S DEFAULT IN MAINTENANCE. If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

12.4. FENCES BETWEEN LOTS. The concept of shared fences is intended to be more space-efficient, material-efficient, and cost-efficient than each owner separately fencing his own lot, with two fences abutting. Sharing fences requires cooperation and flexibility by and between owners of adjoining lots. A fence or other type of partition located on or near the dividing line between two lots and intended to benefit both lots constitutes a "**Party Wall**" and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

12.4.1. Applicability. This Section applies to fences between two residential lots that are both within the Property. It does not pertain to fences on the perimeter of the Property, or to fences between a residential lot and a common area.

12.4.2. Encroachments & Easement. If the Party Wall is on one lot or another due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

12.4.3. Right to Repair. If the Party Wall is damaged or destroyed from any cause, the owner of either lot may repair or rebuild the Party Wall to its previous condition, and the owners of both lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

12.4.4. Right of Access. The owner of the lot on each side of the Party Wall hereby grants to the owner of the lot on the other side of the Party Wall a reciprocal access easement for maintenance, repair, replacement,

© 2017. Sharon Reuler, P.C. All Rights Reserved.

or reconstruction of the Party Wall, as appropriate and necessary to effect the purposes and provisions of this Section.

12.4.5. Maintenance Costs. The owners of the adjoining lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the Party Wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Tarrant County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

12.4.6. Alterations. The owner of a lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the other lot, without the prior written consent of the owner of the other lot. Unless both owners reach a mutual decision to the contrary, the Party Wall will always remain in the same location as where initially erected.

12.4.7. Abandonment. An owner who installs a privacy fence inside, along, and next to a Party Wall is deemed to abandon the Party Wall to the owner of the adjacent lot.

ARTICLE 13
MORTGAGEE PROTECTION

13.1. FIRST MORTGAGEE RIGHTS. This Article establishes certain standards for the benefit of a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a lot, or any renewal, modification, or refinancing thereof ("**First Mortgagee**"). Each First Mortgagee has the following rights under this Declaration:

13.1.1. Lien Superiority. As stated in the Assessment Lien Article of this Declaration, the lien in a First Mortgagee's recorded deed of trust is superior to the Association's lien for assessments.

13.1.2. Representation. In dealing with the Association, a First Mortgagee may be represented by a mortgage servicer, agent, or representative.

13.1.3. Termination. An action to terminate the legal status of the Property as a planned unit development must be approved by the First Mortgagees on at least a majority of the lots that are subject to an outstanding purchase money mortgage, in addition to the required consents of owners, subject to the right of Declarant to unilaterally terminate during the Development Period if the Property has no common areas.

13.1.4. Books & Meetings. A First Mortgagee may inspect the Association's books and records, including the Governing Documents, by appointment, during normal business hours. A First Mortgagee may attend and address any meeting which an owner may attend.

13.1.5. Financial Statements. A First Mortgagee may have an audited statement of the Association's books and records prepared at its own expense. If the Association obtains an audited statement for its members, if a First Mortgagee so requests, the Association will give the First Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end.

13.1.6. Right of First Refusal. As initially written, this Declaration does not create a right of first refusal. Any right of first refusal imposed in the future by the Association with respect to a lease, sale, or transfer of a lot does not and may not apply to a lease, sale, or transfer by a First Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

13.1.7. Amending Governing Documents. If a First Mortgagee requests from the Association compliance with the mortgage underwriting guidelines of a National Lender, the board, without approval of owners or First

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Official Copy

Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the National Lender. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls.

13.2. CONSENTS OF MORTGAGEES. If the Governing Documents or applicable law require the consent of mortgagees for an act, decision, or amendment by the Association, the approval of a mortgagee is implied when the mortgagee fails to respond within 60 days after receiving the Association's written request for approval of the act, decision or amendment, provided the Association's request to the mortgagee was delivered by certified or registered mail, return receipt requested.

ARTICLE 14
AMENDMENTS

14.1. AMENDMENT BY OR AFFECTING DECLARANT. In this Declaration, particularly in the Article titled Covenants for Declarant's Benefit and the attached Appendix B, Declarant reserves certain superior rights regarding adoption, amendment, interpretation, and enforcement of this Declaration and other Governing Documents, which condition the following Sections authorizing amendments by the board and by members.

Like public laws, this Declaration can be changed ~ and the change may apply to you even if you didn't vote for it.

14.2. AMENDMENT BY BOARD. The board may not unilaterally amend this Declaration or the Owners Manual, except for the following limited purposes, which must be clearly identified in the instrument of amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consents of all directors, there being no vacancy on the board:

(1) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any public or quasi-public program or benefit, if doing so is in the best interests of the Association and its members.

(2) To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its members.

(3) To comply with a requirement of applicable law that requires a specific provision to be included in or removed from a document.

14.3. AMENDMENT BY MEMBERS. Except for certain amendments of this Declaration that may be executed by Declarant alone, or by the board alone, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners. For an amendment of this Declaration that requires the approval of owners, the consents may be solicited by any method selected by the board from time to time, pursuant to the Bylaws and applicable law, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

14.4. EFFECTIVE. To be effective, an amendment approved by the owners or by the board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors and, if required, First Mortgagees; and (3) recorded in the Real Property Records of Tarrant County, Texas, except as modified by the following section.

14.5. ANNEXATION. After Build-Out and Sell-Out, additional land may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association by the Association with the consent of owners representing at least two-thirds of the lots in the Property, and the consent of the owner of the real property being annexed. Annexation of additional property is accomplished by recording an amendment of annexation or a supplemental declaration in the

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Copy

Real Property Records of Tarrant County, Texas. *(Declarant may unilaterally subject additional land to this Declaration pursuant to Appendix B)*

14.6. APPENDIXES. To amend an Appendix of this Declaration, it is not necessary to restate and re-record this entire Declaration. Each Appendix of this Declaration may be amended, restated, and supplemented individually as an amendment of this Declaration.

14.7. ORDINANCE COMPLIANCE. When amending a Governing Document, the Association must consider the validity and enforceability of the amendment in light of applicable law, such as (if any) subdivision ordinances of a local government.

14.8. MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving association pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

14.9. TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least a majority of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least two-thirds of the lots. If a local government requires its prior approval of a change of status for the Property or to terminate the Association, the amendment must also be executed by the local government. Notwithstanding the foregoing, during the Development Period - if the Property has no common areas - Declarant may unilaterally terminate the status of the Property as a planned unit development.

14.10. CONDEMNATION. In any proceeding, negotiation, settlement, or agreement concerning condemnation of a common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 15
INDEMNIFICATION & RELEASE

15.1. CONSIDERATION. Each owner, by acquiring an ownership interest in a lot, and each resident, by occupying a home in the Property, grants the releases from duty and liability contained in this Article as consideration for being part of the Glenwyck community and as consideration for and a condition to having the benefits, use, or enjoyment of common areas, common improvements, or common services (if any) of Glenwyck. Each owner and resident acknowledges and agrees that the releases from liability contained in this Article are a material inducement to Declarant and to the Builders to sell, convey, lease, or allow the use of lots and homes in Glenwyck.

15.2. RELEASE FOR HEALTH, WELFARE, SAFETY. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, and each resident of any portion of the Property, covenants and agrees that the Association is **not responsible for the health, welfare, or safety of residents of the Property or their guests**, even if the Association acts or fails to act in accordance with public laws, policies, and recommendations that may be characterized as supporting the "health, welfare, or safety" of residents or the general public. BY ACQUIRING AN OWNERSHIP OR OCCUPANCY INTEREST IN A HOME, EACH OWNER AND RESIDENT, FOR HIMSELF AND HIS INVITEES, AGREES TO THE FOLLOWING COVENANTS AND CONDITIONS:

15.2.1. No Duty. The Association has no duty for the health, welfare, or safety of living beings or property.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Copy

15.2.2. Action Does Not Create Liability. Even if the Association acts for the health, welfare, or safety of living beings or property, such as acting in accordance with public mandates, authorizations, or recommendations that support health, welfare, or safety, the Association does not become liable for the actual health, welfare, or safety of living beings or property in Glenwyck, and is not liable for the efficacy or lack of efficacy of the act, or for any consequence that ensues from the act.

15.2.3. Inaction Does Not Create Liability. By failing or refusing to act in accordance with public mandates, authorizations, or recommendations that support health, welfare, or safety, the Association does not become liable for actual health, welfare, or safety of residents and other beings, or for any consequence that ensues from the inaction.

15.2.4. Inconsistency Does Not Create Liability. The Association is not liable to its members or any person for inconsistency or inadequacy in responding to public mandates, authorizations, or recommendations that support the health, welfare, or safety of residents and other beings.

15.2.5. Limits. This Section may not be construed as authorization for the Association to act with reckless disregard for the health, welfare, or safety of residents.

PLEASE PAY HEED TO THE PRIVACY & SECURITY SECTIONS

15.3. PRIVACY. Because this Declaration is written in the "post-privacy era," the Association hereby disavows a duty of any kind - express or implied, to the extent permitted by law - to shield owners and residents from invasions of privacy. **Each owner and resident acknowledges and accepts that the Association does not guaranty the privacy of his person, property, or data.** The Association may, but is not obligated to, adopt policies, procedures, or systems designed, either directly or indirectly, to endeavor to support the privacy of persons, property, and data. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable to any person for any exposure, loss, nuisance, or damage caused by the failure or ineffectiveness of privacy protection measures undertaken or by inaction regarding privacy protection measures.

15.4. SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety or the perception of safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. **Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same.** Each owner and resident further acknowledges that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

15.5. INDEMNITY FOR ASSOCIATION OPERATIONS. The Association indemnifies, defends, and holds harmless Declarant against any loss, claim, demand, damage, cost, and expense relating to or arising out of the management and operation of the Association, including without limitation, the collection of assessments, the enforcement of the Governing Documents, and the operation and maintenance of the common areas. Indemnified expenses include, without limitation, reasonable attorneys fees, whether or not a lawsuit is filed, and costs at all court levels, including expenses incurred by Declarant in establishing the right to be indemnified, defended, and held harmless pursuant to this Declaration.

15.6. RELEASE FOR INJURY OR LOSS. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, and each resident of any portion of the Property, covenants and agrees that the Association, the ARC, Declarant, and their respective directors, officers, committees, members, agents, and employees (individually and collectively, the "**Indemnitees**") may not be held liable to any person claiming any loss

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.
Unofficial Copy

or damage including, without limitation, indirect, special, or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the design, construction, maintenance, or use of any common area, expressly including every item of equipment used in connection therewith, including, without limitation, any claim arising in whole or in part from the negligence of an Indemnitee.

IMPORTANT TO READ AND UNDERSTAND THESE RELEASES

15.7. **INTENT TO RELEASE FROM NEGLIGENCE**. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, and each resident of any portion of the Property by the act of occupancy, acknowledges that the releases and indemnities contained in this Article are **intended to release and indemnify the Indemnitees from liability for their own negligence or carelessness.**

15.8. **AGAINST SELF-INTEREST OF OWNER OR OCCUPANT**. Each owner and resident acknowledges that the releases and indemnitees in this Article are **contrary to the self-interest of the owner or resident.** In other words, the releases and indemnities are not in the owner or resident's best interest.

ARTICLE 16
DISPUTE RESOLUTION

16.1. INTRODUCTION & DEFINITIONS. The Association, owners, residents, Declarant, Builders, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. A Party may not avoid this Article by assigning its cause of action to another person. As used in this Article only, the following words, when capitalized, have the following specified meanings:

16.1.1. "**Claim**" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

(1) Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.

(2) Claims relating to the rights or duties of Declarant as Declarant under the Governing Documents.

(3) Claims relating to the design, construction, or maintenance of the Property.

(4) Disputes of any kind between residents and owners.

16.1.2. "**Claimant**" means any Party having a Claim against any other Party.

16.1.3. "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:

(1) The Association's claim for assessments, and any action by the Association to collect assessments.

(2) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.

(3) Enforcement by Declarant or the Association, or their respective representatives, of the easements, architectural control, maintenance, and use restrictions of this Declaration.

Unofficial Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

(4) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

16.1.4. "**Respondent**" means the Party against whom the Claimant has a Claim.

16.2. MANDATORY PROCEDURES. **Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.**

16.3. NOTICE. Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

16.4. NEGOTIATION. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

☺ LET'S WORK IT OUT ☺

16.5. MEDIATION. If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

16.6. TERMINATION OF MEDIATION. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

16.7. ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

16.8. ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

16.9. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

16.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternative dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of owners of at least 75 percent of the lots.

16.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

16.10.2. Higher Approval of Certain Suits. Except to obtain a temporary restraining order when circumstances warrant, the Association may not initiate any judicial or administrative proceeding against a current or former officer or director of the Association, the ARC, Declarant, or a Builder without the approval of owners representing at least 75 percent of the lots because of the potential for counterclaims and the costs and liabilities appurtenant thereto.

16.10.3. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income, reserve funds, or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

16.10.4. Settlement. The board, on behalf of the Association and without the consent of owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

16.11. CONSTRUCTION-RELATED DISPUTES. In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as Chapter 27 of the Texas Property Code, the Residential Construction Liability Act.

ARTICLE 17
HOME SALES & RESALES

17.1. GENERAL. In the era in which this Declaration is written, the law pertaining to the sale and resale of residential lots governed by a mandatory property owners association is evolving. The purpose of this Article is to formalize the process by which Association-related fees are imposed on lot sales. An obligation to the Association or its managing agent for transfer-related fees on a lot conveyance varies by whether the lot is vacant or improved with a home, and whether the home is new or a resale. Lot sales in the Property are not subject to a right of first refusal in favor of the Association or its individual members. An owner who sells his lot under an executory contract (contract for deed) may delegate his membership rights to the contract purchaser, provided a written assignment signed by the contract seller and purchaser is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

17.2. HOA SALE FEES. "**HOA Sale Fee**" means a non-refundable expense, fee, charge, or contribution that is charged by the Association or its manager in connection with the sale or purchase of a lot, pursuant to the Governing Documents, applicable law, or a management contract to which the Association is a party. A buyer's prepaid or pro-rata assessments are not HOA Sale Fees. HOA Sale Fees are generally of two types - budget enhancing fees (also known as "**cap fees**"), such as contributions to the reserve or operating funds of the Association, and administrative fees (also known as "**transfer fees**"), such as fees for resale certificates and ownership record changes. The Association and its

© 2017. Sharon Reuler, P.C. All Rights Reserved.

manager may waive some or all HOA Sale Fees on a transfer by transfer basis, without waiving the right to charge such fees on future transfers.

17.3. ADMINISTRATIVE TRANSFER FEES. Transfer-related administrative fees may be charged and collected only pursuant to a contract, policy, or resolution adopted by the board identifying the type, purpose, amount, and beneficiary of each administrative transfer fee charged to an owner or prospective owner by the Association or its managing agent. The number, amounts, and types of administrative transfer fees may not exceed what is customary for the local marketplace. To be effective, the contract, policy, or resolution must be signed by an officer of the Association, certifying approval by the board. This Article does not require the Association or its manager to levy administrative HOA Sale Fees.

17.4. NEW HOME SALES. HOA Sale Fees pertaining to sales of vacant lots to Builders and New Home Sales are addressed at the end of Appendix C of this Declaration. The Association may not determine or change any aspect of HOA Sale Fees pertaining to the conveyance of New Homes and vacant lots or land without Declarant's prior consent in a publicly recorded writing that is dated, signed, and acknowledged by Declarant, which consent may not be deemed from any act, omission, or other writing. This Section will cease to apply to the Property upon Sell-Out.

17.5. HOME RESALES. This Section applies to every "**Home Resale**", being the sale or conveyance of a residential lot that is improved with a completed dwelling, and for which the selling owner is a person other than Declarant or a Builder. This Section does not apply to the sale of vacant lots and New Home Sales by Declarant or Builders.

17.5.1. Resale Certificate. An owner intending to sell his home will notify the Association and will request a resale certificate from the Association. The resale certificate provided by the Association or its manager must state the amount, type, and payee of each HOA Sale Fee, which must conform to the Association's contract, policy, or resolution then in effect.

17.5.2. Amounts. At time of closing a Home Resale, the following amounts are due and payable by buyer or seller of a Home Resale, subject to the limited exclusions below.

(1) To the Association, a one-time contribution to the Association's reserve funds, in the amount of **one-sixth of the annual regular assessment** for each lot purchased.

(2) If any, the customary administrative HOA Sale Fees, payable to the Association or its manager, as directed at time of closing.

17.5.3. Notice of Obligation. HOA Sale Fees on a Home Resale may be paid by either the seller or the buyer, per their negotiations, and are typically collected at closing. If HOA Sale Fees are not collected at closing, the buyer remains liable to the Association or to the manager, as applicable, for the fee until the fee is received. HOA Sales Fees may not be avoided by effecting the transfer without the services of a title company.

17.5.4. Information. Within 30 days after acquiring an interest in an improved lot, an owner will provide the Association with the following information: a copy of the settlement statement or deed by which owner has title to the lot; the owner's email address (if any), U. S. postal address, and phone number; any mortgagee's name, address, and loan number; the name and phone number of any resident other than the owner; the name, address, and phone number of owner's managing agent, if any.

17.6. CHANGES IN AMOUNTS. Notwithstanding the Amendments Article of this Declaration, the board, without a vote of the owners, may amend this Article for the following two purposes only: (1) to change the amount or formula stated for HOA Sale Fees on Home Resales, or (2) to conform this Article with applicable law regarding HOA Sale Fees on Home Resales. The change of amount or formula is not effective unless stated in a writing that is publicly recorded in the Real Property Records of Tarrant County, Texas, signed and acknowledged by an officer of the Association. If the change of amount results in an overall reduction of HOA Sale Fees for a conveyance that is pending at the time of the change, the lower rate is effective immediately for any closing that occurs after the date the notice of change is publicly recorded. If the change of amount results in an overall increase of HOA Sale Fees for the lot being conveyed at the time of the change, the increased amount is not effective until the 90th day after the date on which the notice of change is publicly recorded.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

17.7. EXCLUSIONS. Except for the above duty to provide the Association with information at time of transfer, the requirements of this Article, including the obligation for HOA Sale Fees, do not apply to the following transfers: (1) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (2) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (3) transfer to, from, or by the Association; (4) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (5) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (6) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; (7) a disposition by a government or governmental agency; or (8) a transfer from Declarant to a successor Declarant or to an affiliate of Declarant.

ARTICLE 18
COVENANTS FOR DECLARANT'S BENEFIT

This Article highlights, emphasizes, and reasserts certain rights reserved elsewhere in this Declaration for the benefit of Declarant. Every person who acquires an ownership interest in the Property while Declarant has reserved rights and reservations under this Declaration is presumed to have actual knowledge of this Article and to be bound by its terms.

18.1. OWNERSHIP NOT REQUIRED. As stated in Appendix B, Declarant's rights and reservations under this Declaration are not contingent on Declarant's ownership of a lot. However, if it becomes necessary or desirable for Declarant to own land subject to this Declaration in order to exercise a Declarant right or reservation, Declarant hereby reserves the right to acquire or re-acquire an ownership interest in one or more lots or unplatted parcels in the Property for that purpose, in addition to Declarant's right to unilaterally subject additional land to this Declaration.

18.2. ECONOMIC INTEREST. As a prominent developer of residential communities, Declarant's economic interest in the Property continues at least until the development is completely expanded, developed, built-out and sold-out, without regard to day-to-day ownership of lots in the Property. Because the Property and the Governing Documents are branded with Declarant's name, Declarant's reputation as a homebuilder and developer of subdivisions is inextricably linked to the Property's reputation and success. For that reason, Declarant rights - such as rights to unilaterally expand the Property, unilaterally amend this Declaration, and unilaterally adopt and amend other Governing Documents - are not dependent on Declarant's ownership of a lot, which is only one type of economic interest in the subdivision. Another economic interest is Declarant's reasonable expectation to market future subdivisions off the successful completion of this Property, the retention of property values, and the viability of the Association. In service to those outcomes, Declarant retains a substantial bundle of significant rights that straddle periods when Declarant may own no lot in the Property while having a significant economic interest.

18.3. ASSOCIATION FINANCES. Declarant and property owned by Declarant or its affiliates or by an owner who is under contract to sell the property to Declarant are exempt from assessment by the Association. During the Declarant Control Period, the Association may apply all monies received from owners to the operating expenses of the Association, and is not required by this Declaration to fund reserve accounts, even if a projected build-out budget for the Association shows contributions to reserves. During the Declarant Control Period only, Declarant may contribute or loan money to the Association if monies received from owners are not sufficient to cover the Association's operating expenses. After the Declarant Control Period, the Association must adopt a budget that can be funded fully by owners other than Declarant, its affiliates, or an owner who is under contract to sell the property to Declarant.

18.4. AMENDING GOVERNING DOCUMENTS. Declarant has an exclusive right to unilaterally amend, supplement, and restate this Declaration and every other Governing Document for any purpose, and the right to adopt Governing Documents, as stated in Appendix B. A provision of this Declaration or any other Governing Document that pertains in any way - directly or indirectly - to Declarant or Builders, or to their rights and reservations under this Declaration, such as this Article and Appendixes B and C (without limitation), may not be changed or terminated without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Nor may this Declaration or any other Governing Document be adopted, changed, or terminated to increase the liabilities or responsibilities of Declarant or Builders, without Declarant's written and acknowledged consent, which must be part of the recorded instrument. A document that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. See the "Right to Approve" subsection of the Section titled Governing Documents Rights & Reservations in Appendix B, which is referenced here for emphasis.

UNOFFICIAL DOCUMENT

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

18.5. APPENDIXES B AND C. The provisions of Appendixes B and C of this Declaration control over anything to the contrary in the main body of this Declaration or in any other Governing Document. This Declaration may not be published, amended, or restated without Appendixes B and C, without Declarant's written and acknowledged consent on the amendment, restatement, or publication of this Declaration.

ARTICLE 19
GENERAL PROVISIONS FOR ALL GOVERNING DOCUMENTS

19.1. HIGHER AUTHORITY. The Governing Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance. Among the Governing Documents there is a pecking order.

19.1.1. Between Documents. In the event of a conflict between the Governing Documents and subject to the exception below, the hierarchy of authority is as follows: the Plat (highest), this Declaration, Owners Manual, Articles of Association (certificate of formation), Bylaws, board-made rules, and (lowest) policies, procedures, and guidelines.

19.1.2. Within Declaration. In the event of a conflict within this Declaration, Appendix B has the highest authority, followed by Appendix C, and lastly by the main body of this Declaration. In the event of a conflict between this Declaration and a subsequent amendment, the amendment controls for the purposes of the amendment. In the event of a conflict between this Declaration and a supplement, the supplement controls for the purposes of the supplement.

19.1.3. Exception. If a law that is specifically applicable to property owners associations, such as Prop. Code Chapter 209, authorizes certain actions or the adoption of certain policies or procedures, the Association may act or adopt pursuant to applicable law even if the act or adoption appears to be inconsistent with an otherwise superior Governing Document.

19.2. COMPLIANCE. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, as same may be amended from time to time, of any public or quasi-public entity having jurisdiction over the Association or Property. Users of this Declaration and the other Governing Documents should periodically review statutes and court rulings that may modify or nullify a provision or its enforcement, or may create rights or duties not anticipated by a Governing Document.

Laws are superior to the HOA Docs, and laws change.

19.3. CHANGE OF APPLICABLE LAW. This Section applies to a provision of a Governing Document that is modified, rendered void, or becomes obsolete because of a change of applicable law. If the board of directors determines that the significance of the provision that is changed by operation of law should be brought to the attention of owners and the public, the board of directors, without a vote of the owners, may issue a Notice of Change that references the provision of a Governing Document and how it is affected by applicable law. The Notice may be recorded in the Real Property Records of Tarrant County, Texas, and does not constitute an amendment of the Governing Document. If such a Notice is issued, the Association will notify owners of its existence and will make it available to owners as a record of the Association. This provision may not be construed to give the board unilateral amendment powers, nor to prevent an amendment of a Governing Document to achieve the same purpose.

19.4. NOTICE. Any demand or written notice required or permitted by a Governing Document may be sent by any method or combination of methods permitted or required by applicable law, such as (without limitation) electronic mail, first-class mail, priority mail, verified mail, or certified mail, postage prepaid. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent to the address of the owner's lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

19.5. CHANGING TECHNOLOGY. The Governing Documents are drafted at the end of an era that uses ink on paper to communicate, to give notice, and to memorialize decisions. The next era of communications may be paperless, relying on electronic communications for many activities that are customarily papered on the date of this Declaration. As technology changes, the terms of the Governing Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Governing Document.

19.6. LIBERAL CONSTRUCTION. The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision in any Governing Document or applicable law, including restrictions on the use or alienability of property, will be resolved in the follow order of preferences: first to give effect to Declarant's intent to protect Declarant's interests in the Property, second to give effect to Declarant's intent to direct the Build-Out and Sell-Out of the Property, third to give effect to Declarant's intent to control governance of the Association for the maximum permitted period, then in favor of the operation of the Association and its enforcement of the Governing Documents for the benefit of owners collectively, and finally to protect the rights of individual owners, regardless which party seeks enforcement.

19.7. SEVERABILITY. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

19.8. CAPTIONS. In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

19.9. INTERPRETATION. Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate. The use of "or" in a series as inclusive or exclusive depends on the context.

19.10. DURATION. Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

19.11. APPENDIXES. The following appendixes are attached to this Declaration and incorporated by reference:

A - Description of Subject Land
B - Declarant's Rights & Reservations for Build-Out & Sell-Out
C - Declarant's Rights & Reservations for Association Governance
D - Notice of Possible Oil & Gas Activity Affecting the Subdivision
E - Retaining Walls

(Signed on next page.)

Unofficial Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

SIGNED AND ACKNOWLEDGED

SIGNED on the date stated in the acknowledgment below.

D. R. HORTON - TEXAS, LTD., a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

By: _____
Mark P. Allen, Assistant Vice President

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on this 20 day of December 2017 by Mark P. Allen, Assistant Vice President of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.

KATIE SABIN
ID # 130023623
My Comm. Exp. Nov. 12, 2018

_____
Notary Public, The State of Texas

Unofficial Copy

Appendix B and Appendix C have priority over the main body of this Declaration.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

APPENDIX A
TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR GLENWYCK

DESCRIPTION OF SUBJECT LAND

The 34.503-acre tract of land described by metes and bounds on Sheet 2 of the Final Plat of Glenwyck, recorded on July 1, 2017, as Document No. D217160403, Plat Records, Tarrant County, Texas, including the following common areas and 159 house lots:

HOUSE LOTS

BLOCK A: LOTS 1 - 20
BLOCK B: LOTS 1 - 30
BLOCK C: LOTS 1 - 28
BLOCK D: LOTS 1 - 30
BLOCK E: LOTS 1 - 14
BLOCK F: LOTS 1 - 7
BLOCK G: LOTS 1 - 20
BLOCK H: LOTS 1 - 10

COMMON AREAS

LOT 6X, BLOCK A
LOTS 19X, BLOCK A
LOT 20X, BLOCK A
LOTS 21X, BLOCK A
LOT 14X, BLOCK E
LOT 7X, BLOCK F
LOT 8X, BLOCK G
LOT 20X, BLOCK G
LOT 10X, BLOCK H

(End of Appendix A)

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

APPENDIX B
DECLARANT'S RIGHTS & RESERVATIONS FOR BUILD-OUT & SELL-OUT

B.1. GENERAL PROVISIONS. Declarant intends for this Declaration to be perpetual and understands that provisions that are warranted for the complete and orderly development, expansion, Build-Out, and Sell-Out of the Property will eventually become obsolete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, most of the provisions relating to the roles of Declarant and Builders (if any) are compiled in this Appendix and Appendix C. **The terms and provisions of this Appendix are superior to the terms and provisions of the other Governing Documents, such as the Owners Manual, Bylaws, Articles, and the main body of the Declaration.**

B.1.1. General Reservation & Construction. Declarant hereby reserves exclusively unto itself and its successors, assigns, and designees, the rights and reservations contained in this Appendix. No other provision in a Governing Document may be construed to prevent or interfere with Declarant's exercise of its rights and reservations. Nor many any mortgagee, other owner, or the Association, prevent or interfere with Declarant's exercise of its rights and reservations. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to ensure the complete and orderly development, expansion, Build-Out, and Sell-Out of the Property, which is ultimately for the benefit and protection of homeowners and mortgagees, as well as to protect the interests and investments of Declarant and Builders (if any), and Declarant's reputation as a community developer.

Declarant's rights are not tied to land ownership.

B.1.2. Ownership Not Required. This Appendix intends for Declarant's rights and reservations to be extant until certain statuses are attained, such as Sell-Out or the end of the Development Period, whether or not Declarant owns any part of the Property. In other words, **Declarant need not be an owner to exercise the rights and reservations of Declarant**. If the laws of Texas are amended or interpreted to predicate all or any of Declarant's rights on an interest in real property subject to the Declaration, for the purpose of satisfying such a requirement, Declarant hereby reserves an independent right to acquire or reacquire real property already subject to the Declaration, or to subject additional real property to this Declaration by means of a supplemental declaration.

B.1.3. Statutory Reservation. Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under applicable law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of applicable law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection.

B.1.4. Amendment. An amendment, restatement, supplement, or termination of this Appendix or any of its provisions is void and unenforceable without Declarant's prior written approval of the instrument, as evidenced by Declarant's acknowledged signature on the instrument that is publicly recorded.

B.1.5. Reserved Periods. This Appendix creates a number of periods of time for the exercise of certain reserved rights, such as Development Period, Build-Out, and Sell-Out. Each reservation period is independent of the others. Each reservation period is for a term of years or until a stated status is attained, and does not require that Declarant own a lot or any other land. No act, statement, or omission by the Association, a Builder, or any other party may effect a change or termination of any reservation period. Declarant, however, may unilaterally change any reservation period by amending this Appendix. To document the end of a reservation period, Declarant may (but is not required to) execute and publicly record a notice of termination of the period.

B.2. DEFINITIONS. Words and phrases defined in Article 1 of the Declaration and in Appendix C have the same meanings when used in this Appendix. As used in this Appendix and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings, subject to Declarant's right to amend or supplement this Section:

© 2017. Sharon Reuler, P.C. All Rights Reserved.

UNOFFICIAL COPY

B.2.1. "**Builder**" means a person or entity which owns or contracts to purchase a vacant lot for the purpose of constructing or completing a new dwelling for speculative sale or pursuant to a construction contract with a prospective owner. As used in this Declaration, Builder does not refer to Declarant or to a home building or home marketing company that is an affiliate of Declarant.

B.2.2. "**Build-Out**" is the status that the Property attains when (in the sole opinion of Declarant) the Property is fully expanded, fully platted, fully developed, and every lot that is capable of being improved has been improved with a completed dwelling and customary appurtenances, at which time the Property will be "**Built-Out**" from the Declarant's perspective. As used in this definition, "fully" and "every" means 100 percent.

These defined terms are used in other parts of the Declaration

B.2.3. "**Development Period**" means the period of time that runs continuously from the date this Declaration is recorded, during which Declarant reserves the right to facilitate the platting, expansion, development, construction, and marketing of the Property as it may be enlarged, and the right to direct the size, shape, and composition of the Property as it may be enlarged, pursuant to the rights and reservations contained in this Declaration, particularly in this Appendix and Appendix C, to the full extent permitted by applicable law. **Declarant hereby states the length of the reserved Development Period as 15 years, and reserves the right to increase or decrease the length by amendment of this Declaration.** The Development Period is for a term of years and does not require that Declarant own land or lots in the Property. If applicable law requires an event of termination as an alternative to a stated number of years, the Development Period runs continuously from the date this Declaration is recorded until three years after the date on which every lot that may be created in the Property (as it may be enlarged) is (1) made subject to this Declaration, (2) improved with a completed dwelling, and (3) conveyed to an owner other than a Builder, Declarant, or their respective affiliates.

B.2.4. "**Sell-Out**" is the status that the Property attains after Build-Out, when every home is occupied or owned by a person other than a Builder, Declarant, or their respective affiliates. Until Sell-Out, Builders and Declarant have protective rights established by this Declaration to market vacant lots and new homes in the Property. Sell-Out will be deemed to have occurred five years after Build-Out, if it has not occurred prior to that time. No act, statement, or omission by the Association, a Builder, or any other party may effect the attainment of "Sell-Out" before Build-Out.

B.2.5. "**Unilaterally**" means that Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, Builders, and the Association. Certain provisions in this Appendix and elsewhere in the Governing Documents authorize Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

B.3. LAND USE RIGHTS & RESERVATIONS. Declarant reserves the following rights, reservations, and easements, exercisable at Declarant's sole discretion, from time to time, and at **any time prior to the later of Build-Out or the end of the Development Period, whichever event is last to occur** (unless a different period is specified), without requiring that Declarant own land described in Appendix A or in any supplemental declaration at the time or times Declarant exercises its right or reservation.

B.3.1. Platting & Replatting. Any unplatted land subject to this Declaration may be platted in whole or in part, and in phases. Additionally, any platted portion of the Property may be replatted, in whole or in part, for any reason, such as to change lot boundaries, to increase or decrease the number of lots in the Property, to change land use, to convert residential lots into common area and common area into residential lots, to impose or remove easements, and to effect any other land use which, in the sole discretion of Declarant, is conducive to Build-Out and Sell-Out of the Property.

B.3.2. Expansion. Declarant reserves the right (not duty) to make additional real property subject to the Declaration and to the jurisdiction of the Association. Declarant may annex any real property (1) any portion of which is contiguous with, adjacent to, or within 1,000 feet of any real property that is subject to this Declaration, (2) any portion of which is separated by a street, public right-of-way, public land, or utility-owned land or easement from any portion of the real property that is subject to this Declaration, (3) in an addition or subdivision platted as a phase or section of Glenwyck, or (4) located in a planned development district created by the City of Fort

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Worth for the property subject to this Declaration. Declarant annexes real property by subjecting it to the Declaration with an instrument (such as a supplemental declaration) recorded in the Real Property Records of Tarrant County, Texas. Unless this Declaration or the instrument of annexation provides otherwise, real property automatically becomes subject to the jurisdiction of the Association when it becomes subject to the Declaration.

B.3.3. Reinstated Rights, if Necessary. In case events and circumstances, applicable law, or a Governing Document are interpreted to limit or terminate Declarant's rights and reservations prior to their maximum durations, Declarant hereby **DECLARES** that all rights and reservations of Declarant for Build-Out and Sell-Out are in effect or reinstated anew for every piece of additional land that is made subject to this Declaration.

B.3.4. Withdrawal. Until Build-Out, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the overall appearance, character, operation, or use of the Property.

B.3.5. Re-Acquired Interest, if Necessary. If applicable law requires that Declarant own an interest in the Property as a condition of exercising the rights reserved by Declarant in this Declaration, Declarant hereby reserves the right to acquire or re-acquire the required interest.

B.3.6. Delegation. Declarant may delegate to the Association the obligation (if any) and the attendant cost - in whole or in part - imposed on Declarant by local government or by a development-related agreement for maintenance of real property or maintenance of improvements within or near the Property that may be construed as benefitting the Property or the larger community. The cost of such maintenance is a common expense of the Association.

B.3.7. Neighborhoods. Declarant may impose additional or different restrictions on a "neighborhood" within the Property, which may be subject to an additional "neighborhood assessment," and which may have exclusive use of "neighborhood common areas." If a portion of the Property were gated, for example, the gated portion could be a "neighborhood" within the Property, with the private street as its "neighborhood common area."

B.3.8. Additional Easements & Restrictions. Until Sell-Out, Declarant reserves a blanket easement and right over the Property to burden the Property, or any part or parts thereof, with additional covenants, conditions, restrictions, easements, licenses, and leases as may be necessary or desirable for the orderly or proper development, operation, use, enjoyment, and maintenance of the Property or any adjacent property, or to facilitate access to or through the Property or adjacent property. Declarant may evidence one or more additional covenants, conditions, restrictions, easements, licenses, or leases by recording an instrument in the Real Property Records of Tarrant County, Texas, executed in the name of Declarant or in the name of the Association, without the approval or joinder of any other party, including, but not limited to, the Association.

B.3.9. Utility Easements. Until Build-Out, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities (as described in the Utilities Easement Section above), roads, and other purposes necessary for the proper development and operation of the Property. Declarant hereby reserves an easement across every utility, drainage, access, firelane, or other easement shown on a recorded plat (the "platted easements") for the installation, operation maintenance, repair or removal of a utility serving any portion of the Property, together with a full right of ingress and egress at all times over the burdened lot for the stated purposes, and the right to remove any obstruction that interferes with the use or exercise of the easement. Declarant reserves the right to make changes in and additions to the easements on common areas and vacant lots to more efficiently or economically install utilities or other improvements. To exercise this right on a lot that is not owned by Declarant, Declarant must have the prior consent of the lot owner, which may not be unreasonably withheld. Declarant may assign and convey the easements and easement rights reserved by this Section, in whole or in part, to one or more public or private utilities, the Association, a public or quasi-public entity, or any other person.

B.3.10. Utility Contracts. Declarant, in its name or in the name of the Association, may enter into contracts for utility equipment and services for all or portions of the Property, including bulk rate service agreements. Such contract may provide for installation, operation, management, maintenance, and upgrades or modifications to the utility as Declarant determines appropriate. After the Declarant Control Period, Declarant's right to contract for

Unofficial Document

© 2017. Sharon Reuler, P.C. All Rights Reserved.

utilities is limited to vacant lots. Until Build-Out, Declarant must approve any contract for utility service to a vacant lot.

B.3.11. Completion. Until Sell-Out, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in lots owned or leased by Declarant and the common area, whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

B.3.12. Easement to Inspect & Right to Correct. Until five years after Build-Out, Declarant reserves for itself and Builders, and their respective architects, engineers, other design professionals, materials manufacturer, and general contractors, the right, but not the duty, to inspect, monitor, test, redesign, correct, relocate, and replace any structure, improvement, material, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant or Builder, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, a Builder, or the Association. **This Subsection survives Sell-Out if Sell-Out occurs within five years after Build-Out.**

B.3.13. Termination. Declarant may voluntarily and affirmatively terminate the Development Period at any earlier time by signing and acknowledging a notice of voluntary termination that is recorded in the Real Property Records of Tarrant County, Texas. A writing by Declarant may not be construed to be a notice of termination unless that purpose is clearly stated in the writing.

B.4. RIGHTS & RESERVATIONS TO MAKE CHANGES. Until Build-Out, Declarant reserves the following exclusive rights which Declarant may exercise unilaterally from time to time when circumstances warrant.

B.4.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a public or quasi-public entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum or maximum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

B.4.2. Change of Architectural Styles. Declarant reserves the right to periodically change the types of architectural styles, building materials, and elevations that are eligible for architectural approval.

B.4.3. Change of Construction Specifications. Declarant has the right to establish specifications for the construction of all initial improvements in the Property, to establish different specifications for each category of lots, or for each phase or neighborhood within the Property, and to grant variances or waivers for certain lots, phases, or neighborhoods within the Property.

B.4.4. Change of Community Features. The initial plans for use and development of the Property may change in response to a number of circumstances, influences, and opportunities that may not be apparent or applicable at the inception of the development. An owner who acquires a lot while the Property is being developed is hereby given notice that a common area improvement or community feature that is not installed at the time an owner contracts is subject to change. Representations given to a prospective purchaser about a proposed community feature are based on a development plan that makes assumptions that are subject to change.

B.5. ARCHITECTURAL COVENANTS FOR VACANT LOTS. Until Build-Out, Declarant has the absolute unilateral right of architectural control over vacant lots and lots owned by Declarant or Builders, and is the exclusive Architectural Reviewer for vacant lots and lots owned by Declarant or Builders. Neither the Association, the board of directors, the ARC,

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

nor any other committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

B.5.1. Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Declarant or Builders to sell homes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

Declarant is THE architectural authority for new homes

B.5.2. Delegation by Declarant. Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights and authority as Architectural Reviewer, subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

B.5.3. Improvements by Declarant. Notwithstanding anything to the contrary in this Declaration or the Owners Manual, any improvement to a vacant lot made by Declarant or an affiliate of Declarant is deemed to have been approved by the Architectural Reviewer. If the improvement is of a nature that would require a variance or waiver by the Architectural Reviewer, such variance or waiver is deemed to have been granted.

B.5.4. Improvements by Builder. Without the Architectural Reviewer's prior written approval, a Builder or other person may not construct a dwelling or any appurtenant improvement on a vacant lot. An application to the Architectural Reviewer will follow the same procedures and adhere to the same time frames as required by the Declaration for submissions to the ARC for modifications on improved lots, which procedures are hereby incorporated by reference. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Without the Architectural Reviewer's prior written approval for a variance, improvements to a vacant lot must have the characteristics described in construction and landscape specifications provided by Declarant or, otherwise, the Owners Manual.

B.5.5. Approval of Builder Plans. If a Builder intends to construct a number of pre-designed homes in a phase of the Property, the Builder may submit the set of house plans and elevations to Declarant for approval by Declarant. Such plans may be submitted and approved prior to Builder's purchase of lots in the Property. House plans and elevations that are pre-approved by Declarant for use by Builder in a particular phase of the Property may be constructed by Builder without re-submitting plans on a lot by lot basis as the houses are constructed, unless the actual house plan or elevation deviates substantially from the pre-approved plan and elevation. Examples of substantial deviation include (1) reversing a garage from rear entry to front entry, (2) reducing the size of the dwelling by more than 15 percent, (3) reducing the amount of masonry exterior material by more than 15 percent, (4) changing the style of the front elevation, such as from Cape Cod to Spanish, and (5) replacing a garage with a porte cochere. Builder must apply to Declarant for approval of any substantial modifications or variations from or additions to the pre-approved plans for the Property, as well as the plot plan for each house.

B.6. GOVERNING DOCUMENTS RIGHTS & RESERVATIONS. Declarant reserves the following rights and reservations, exercisable at Declarant's sole discretion, from time to time, and at any time prior to the later of Sell-Out or the end of the Development Period, whichever event occurs last (unless a different period is specified), without requiring that Declarant own land described in Appendix A or in any supplemental declaration at the time or times Declarant exercises its right or reservation.

Unofficial Document

© 2017. Sharon Reuler, P.C. All Rights Reserved.

B.6.1. Right to Approve. No Governing Document may create, terminate, or alter any responsibility, right, reservation, privilege, or release of Declarant or a Builder without Declarant's written approval. During the Declarant Control Period, a Governing Document is void and unenforceable in its application to Declarant or Builders, or to property owned or leased by Declarant or Builders, without Declarant's consenting execution of the Governing Document. Until the later of Sell-Out or the end of the Development Period, whichever occurs last, an interpretation, application, adoption, or amendment of a Governing Document is void and unenforceable in its application to Declarant or Builders, or to property owned or leased by Declarant or Builders, without Declarant's prior written approval of the act or instrument.

B.6.2. Adoption. Declarant has the right, but not the duty, to adopt one or more Governing Documents for the Property and for the benefit of the Association, either in its capacity as Declarant, or in the name of the Association. The exercise of this right by Declarant, in its capacity as Declarant, may not be construed as an act or decision of the Association or its board.

Declarant can amend and adopt Governing Documents **UNILATERALLY.**

B.6.3. Amendment. **Declarant may amend, supplement, or restate this Declaration and every other Governing Document, unilaterally, for any purpose.** In addition to exercising this right on its own initiative, Declarant may exercise this right at the request of the Association to address a concern of the membership. The exercise of this right by Declarant, in its capacity as Declarant, may not be construed as an act or decision of the Association or its board. **For illustration only**, the following are examples of some of the purposes for which Declarant may amend the Governing Documents:

(1) To add or withdraw real property to or from the Property.
(2) To create lots, easements, and common areas within the Property.
(3) To subdivide, combine, or reconfigure lots.
(4) To convert lots into common areas, and common areas into lots.
(5) To change the maximum number of lots that may be made subject to this Declaration.
(6) To allocate the use of certain common areas to specified lots as limited common areas.
(7) To change the designation of or restrictions on common areas.
(8) To modify - even to increase - Declarant's rights and reservations.
(9) To change any aspect of the Owners Manual.
(10) To modify HOA Sale Fees.
(11) To merge the Association with another property owners association.
(12) To conform to applicable law.
(13) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions.
(14) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
(15) To enable a reputable company to issue title insurance coverage on the lots.
(16) To change the name or entity of Declarant.
(17) To change the name of the addition in which the Property is located.
(18) To change the name of the Association.
(19) For any other purpose.

B.7. MARKETING RIGHTS & RESERVATIONS. Declarant reserves the following rights, reservations, and easements, exercisable at Declarant's sole discretion, from time to time, and at any time prior to Sell-Out.

B.7.1. Promotion. Until Sell-Out, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing the Property or Declarant's houses, lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots. Until Sell-Out, Declarant also reserves (1) the right to authorize its agents to place signs and promotional materials on the Property to market property owned by Declarant, (2) the right to

Article Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

permit Builders to place signs and promotional materials on the Property, and (3) the right to exempt Builders from the sign restriction in this Declaration.

B.7.2. Marketing Lingo. Use of advertising terms that create an impression that the Property is completely developed does not affect Declarant's reserved rights. Terms such as "close out", "last lots," and "final inventory" may refer to the particular stage, phase, or block that is being marketed, and must not be construed as relinquishment of Declarant's reserved rights to annex additional land, and to build-out and sell-out the further expanded development. Rights reserved in this Declaration by Declarant may not be altered except by amendment of this Declaration to which Declarant consents in writing.

B.7.3. Offices. Until Sell-Out, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

B.7.4. Access. Until Sell-Out, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for construction-related traffic and the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active construction and marketing of lots and homes by Declarant or Builders, including (without limitation) the right to remove gates or to postpone the installation of gates to prevent damage from construction vehicles, and the right to require that the gate be kept open during certain hours or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

B.7.5. Marketing Other Locations. This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or its affiliates. After Sell-Out, if Declarant desires to use or to authorize the use of one or more model homes in the Property to market homes to be built in other locations, Declarant may do so for up to three years after Sell-Out. **This Subsection survives Sell-Out.**

DIFFERENT RULES

Declarant and Builders (if any) have rights and privileges to use the property in ways that are not available to other owners and residents.

B.7.6. Model Home Notice. In connection with its development and marketing of the Property, Declarant may create or authorize one or more marketing centers in the Property, with homes that serve as models of what may be constructed in the Property. The designation of a lot as a model is entirely within the discretion of Declarant. The use of a model home does not require that the model be reproduced in the Property. The sizes, styles, appearances, materials, and construction specifications of model homes may differ significantly from other homes in the immediate vicinity. A model may be approved for construction in one part of the Property, although it markets homes in other parts of the Property. A model home may be substantially remodeled from time to time, or may be replaced by a different home on the same lot. All exterior aspects of a model home are deemed to have been approved by the Architectural Reviewer, with variances if necessary to allow the home to remain in a portion of the Property with different construction specifications. Neither the Association nor the ARC may enact rules, guidelines, or specifications that - by intent or effect - are disproportionally adverse to a home that is or was used as a model. This Section may not be amended without the prior written consent of Declarant and the owner of any model home lot that would be affected by the amendment.

B.8. RELATIONSHIP WITH BUILDERS. Declarant, in its own name or through its affiliates, intends to construct dwellings on the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more Builders to improve the lots with dwellings to be sold and occupied. This Section applies in the event Declarant sells lots to Builders. Until Sell-Out, Declarant may authorize Builders to exercise any or all of the

Unofficial Document

© 2017. Sharon Reuler, P.C. All Rights Reserved.

promotional rights, reservations, and easements that Declarant reserves for itself in this Declaration. Without the prior written approval of Declarant, a Builder may not market its off-site products from its offices, models, or signs in the Property.

Declarant plays an important role in the life of Glenwyck until Sell-Out.

B.9. SUCCESSOR DECLARANT. One role of Declarant may be to buffer the process of building-out and marketing the Property from the possible desire of the Association and homeowners to impose their views on expansion, Build-Out, and Sell-Out. The intent of this Section is for the role of "Declarant" to be extant through Build-Out until Sell-Out, whether or not Declarant is the builder and seller of new homes in the Property, whether or not Declarant owns a lot. The rights, reservations, and roles of Declarant under this Declaration may be transferred, in whole or in part, pursuant to this Section. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants. This Section may not be construed to prevent Declarant from voluntarily designating the Association as a Successor Declarant. Absent a voluntary designation by Declarant, the Association has no basis, authority, or right to be or perform as a successor Declarant.

B.9.1. Voluntary Designation. Declarant may designate one or more Co-Declarants or Successor Declarants for specified designated purposes (such as architectural control over new homes) or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and by the Co- or Successor Declarant, and recorded in the Real Property Records of Tarrant County, Texas. A designation to a lender made in conjunction with a loan, such as a springing designation in a publicly recorded deed of trust, is valid and is deemed to be signed and acknowledged by the lender when the loan is funded. The designation instrument may subject the Co- or Successor Declarant to limitations and restrictions.

B.9.2. Involuntary Designation. A person who acquires substantially all of Declarant's interest in the Property by an involuntary method, such as court order, deed in lieu of foreclosure, foreclosure, or bankruptcy proceeding, may - but is not required to - designate itself, or its successor or assign, as Declarant for all purposes, or for specified purposes (such as architectural control over new homes). To be effective, the designation must be in a writing that (1) describes the involuntary circumstance, (2) is signed and acknowledged by the designatee, and by the designator, if any, and (3) is recorded in the Real Property Records of Tarrant County, Texas. This Subsection is not invalidated by temporary interim ownership of the Property, such as by a trustee, beneficiary, or executor.

B.10. COMMON AREAS. Common areas may be dedicated to the Association or to a public entity by the plat. Additionally, common areas may be conveyed to the Association or, if appropriate, to a public entity, by one or more deeds - with or without warranty of title, and with or without warranty of improvements. At time of conveyance, common areas will be free of encumbrance, except for unpaid or accruing property taxes which are a common expense of the Association. The conveyance to the Association of platted common areas or property intended by Declarant for use as common area is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.

B.11. PARDON OUR DUST. A person who occupies a home during Build-Out is living in a construction site that may experience periodic and temporary inconveniences during the Build-Out and Sell-Out of the Property. Declarant - for itself and the Builders - apologizes in advance for these disturbances, many of which cannot be avoided. The sooner the construction work is completed, the sooner residents will be able to enjoy the community of which they are a part. Declarant hopes Build-Out occurs swiftly and with minimal disruption of residents' lives and households. Declarant thanks residents in advance for their patience and tolerance of what may be a relatively short but challenging period for the Glenwyck community.

(End of Appendix B)

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

APPENDIX C
DECLARANT'S RIGHTS & RESERVATIONS FOR ASSOCIATION GOVERNANCE

C.1. GENERAL PROVISIONS. Declarant intends the Declaration to be perpetual and understands that provisions that are warranted for Declarant's control of the Association's governing and budgetary functions will eventually become obsolete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, most of the provisions relating to Declarant's role, rights, and responsibilities towards the Association and governance of the Property are compiled in this Appendix. **The terms and provisions of this Appendix are superior to the terms and provisions of the other Governing Documents, such as the Bylaws, the Articles, and the main body of the Declaration.** Except for a few provisions which expressly survive Sell-Out, most of the terms and provisions of this Appendix will cease to apply to the Property upon Sell-Out.

C.1.1. General Reservation & Construction. Declarant hereby reserves exclusively unto itself and its successors, assigns, and designees, the rights and reservations contained in this Appendix. No other provision in a Governing Document may be construed to prevent or interfere with Declarant's exercise of its rights and reservations. No mortgagee, other owner, or the Association may prevent or interfere with Declarant's exercise of its rights and reservations. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to control the governing and budgetary functions of the Association for the maximum period of time permitted by applicable law, which is ultimately for the benefit and protection of homeowners and mortgagees, as well as to protect the interests and investments of Declarant and Builders (if any), and Declarant's reputation as a community developer.

C.1.2. Ownership Not Required. This Appendix intends for Declarant's rights and reservations to be extant until certain statuses are attained, whether or not Declarant owns any part of the Property. In other words, **Declarant need not be an owner to exercise the rights and reservations of Declarant.** If the laws of Texas are amended or interpreted retroactively to predicate Declarant's rights on an interest in real property subject to the Declaration, Declarant hereby reserves the right to acquire or re-acquire a lot, or to annex additional real property in order to satisfy the requirement.

C.1.3. Statutory Reservation. Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under applicable law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of applicable law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection.

C.1.4. Amendment. An amendment, restatement, supplement, or termination of this Appendix or any of its provisions is **void and unenforceable without Declarant's prior written approval** of the instrument, as evidenced by Declarant's acknowledged signature on the instrument that is publicly recorded.

C.2. DEFINITIONS. Words and phrases defined in Article 1 of the Declaration and in Appendix B have the same meanings when used in this Appendix. As used in this Appendix and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings, subject to Declarant's right to amend or supplement this Section:

C.2.1. **"Declarant Control Period"** means that period of time during which Declarant has the right to control the operation and management of the Association by appointing officers and directors of the Association, pursuant to the rights and reservations contained in this Appendix, to the full extent permitted by applicable law. If applicable law requires a stated term, the Declarant Control Period runs continuously from the date this Declaration is recorded until the earlier of the following events: (1) **13 years after the date on which this Declaration is publicly recorded**, and (2) **120 days after 95 percent of the lots** that may be created (including property subject to annexation) have been improved with dwellings and conveyed ("closed") to owners other than Builders or Declarant (also referred to as "at 95 percent of Build-Out and Sell-Out"). To the fullest extent possible, the term "Declarant Control Period" as defined by this Declaration will be given effect for the purposes of this Declaration and the other Governing Documents. In event of conflict between this definition and a subsequently enacted statutory definition of "Declarant Control Period," the statutory definition controls for the limited purpose of compliance with the applicable statute.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

C.2.2. **"Shortfall"** is used in this Appendix with the following terms and meanings. **"Actual Shortfall"** is the difference between actual and available cash in the Association's operating account having been contributed by owners other than Declarant, and the Association's actual cash outlays for operating expenses, whether budgeted or not. **"Expected Shortfall"** is the difference between the Association's actual cash outlays for budgeted operating expenses and the assessments payable - collectively - by owners other than Declarant, as if all of those owners paid their assessments in full and on time. **"Shortfall Loan"** is money paid by Declarant to the Association or for the Association's benefit to fund some or all of the difference between the actual shortfall and the expected shortfall.

C.3. CLASSES OF MEMBERS. From the date this Declaration is recorded through Sell-Out, the Association may have as many as three classes of members - Homeowner Class, Homebuilder Class, and Declarant Class, as described below. Each class exists to the extent it has qualified members. On the date this Declaration is recorded, there is one class of members - Declarant Class - which continues to exist until Sell-Out. On the date of recording the first improved lot deed to an owner, the Homeowner Class comes into existence. If a Builder acquires a vacant lot, the date of recording the first vacant lot deed to a Builder establishes the Homebuilder Class. Each lot has only one membership and one class of membership at a time. Except for the Declarant Class, membership is automatic, mandatory, appurtenant to ownership of a lot, and terminates when the member is divested of his ownership interest in the lot to which it is tied and from which it may not be separated. If a lot is owned by more than one person, the co-owners share the membership and decide for themselves how it will be exercised. The board may require satisfactory evidence of transfer of ownership before a purported owner is recognized by the Association as a member. One purpose of the membership classes is to allow (but not require) Declarant to maintain membership in the Association until Sell-Out, even during periods when Declarant does not own property subject to this Declaration. References to "members of the Association" in the Governing Documents and applicable law apply to Association members in each class.

C.3.1. Homeowner Class. A lot owner who is not a member of another class is a Homeowner Class member of the Association, ownership of a lot being the sole qualification for membership.

C.3.2. Homebuilder Class. Homebuilder Class members consist of owners (other than Declarant and its affiliates) who are Builders, owners of unplatted or unimproved land in the Property, and owners of lots with never-occupied dwellings that are being offered for sale or lease. If this class has members at Sell-Out, such as a Builder who occupies a house or who owns a house that is occupied, the Homebuilder Class membership automatically converts to Homeowner Class membership at Sell-Out. Declarant and its affiliates are not members of the Builder Class. During any period when no owner qualifies as a Builder, as defined above, the Homebuilder Class does not exist.

C.3.3. Declarant Class. Declarant Class members of the Association are (1) Declarant, whether or not Declarant owns land in the Property, and (2) any affiliate of Declarant who owns land in the Property. If there are co-Declarants, each co-Declarant is a member of the Declarant Class. The Declarant Class member enjoys the same membership rights as the Homeowner and Homebuilder Class members, except that Declarant's membership does not require ownership of a lot. If a Declarant Class member owns property subject to the Declaration, the member may cast votes for any lot it owns. If a Declarant Class member owns an occupied house at Sell-Out, the membership automatically converts to Homeowner Class membership for any lot with an occupied house owned by a Declarant Class member.

Declarant is a voting member - with or without a lot.

C.4. VOTING. This Section pertains to voting by owners and members of the Association between the date this Declaration is recorded and Sell-Out. The vote appurtenant to each lot is indivisible. Cumulative voting is not allowed.

C.4.1. Number of Lots for Voting Purposes. If the Property contains unplatted tracts of land, each fifteenth of an acre is treated as a lot for voting purposes. When unplatted tracts are platted, the number of voting lots will be automatically adjusted by the number of platted lots. Until a plat is recorded, the number of voting lots may be based on the most recent preliminary plat or unrecorded final plat. If additional property is made subject to this Declaration, the number of voting lots will be increased automatically by the number of additional lots. If the number of lots in the Property changes with final platting or replatting by Declarant or with Declarant's approval, the number of voting lots will be adjusted accordingly.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

C.4.2. Number or Weight of Votes Per Lot. At Sell-Out, each lot will have one vote, and all votes will be uniform in weight. Prior to Sell-Out, the voting power of each lot is determined by its owner's membership class. For each lot owned by a Homeowner Class member, the vote is counted once, as one vote per lot with a weight of one. For each lot owned by a Homebuilder Class member prior to Sell-Out, the vote is counted twice or is tallied as two votes per lot, or is weighted twice that of a Homeowner Class member's vote. For each lot owned by a Declarant Class member prior to Sell-Out, the vote is counted thrice or is tallied as three votes per lot, or is weighted three times that of a Homeowner Class member's vote.

C.4.3. Tallying Votes. Prior to Sell-Out, if applicable law or a Governing Document requires consent by a percentage or share of owners, members, or total votes, the percentage or share will be determined by the percentage of share of total number or weights of votes based on membership class.

C.4.4. Declarant Class Member. **The Declarant Class membership is a voting membership, even if the Declarant Class member does not own a lot in the Property**. Prior to Sell-Out, during any period in which no lot is owned by the Declarant Class member, the Declarant Class member may cast one vote, the weight of which is one.

C.5. MAXIMUM SIZE. To satisfy a requirement of applicable law that the Declaration state the maximum number of lots that may be created and made subject to the Declaration, Declarant hereby states that **maximum number as 225 residential lots** (the "**Maximum Size**"), and reserves the right to increase or reduce that number by amendment of this Declaration. This disclosure of Maximum Size does not obligate Declarant to annex land, to create lots, or to subject lots to the Declaration, and may not be construed as any kind of representation regarding common areas. Declarant's rights that are tied to the size of the Property, such as the calculation for determining the end of the Declarant Control Period, are based on the Maximum Size stated in this Section. The Maximum Size may differ from an interim Build-Out Size which has certain practical applications, such as preparation of the "Build-Out Budget" on which regular assessments are based. Both the Build-Out Size and the Maximum Size may change from time to time during the Development Period in response to changing conditions and opportunities. Generally, the Build-Out Size is grounded in current probability, whereas the larger Maximum Size accounts for future possibility. Both sizes play a role in the development process. The Chapter 209 Election referenced below is based on the Maximum Size.

C.6. BOARD CONTROL RIGHTS & RESERVATIONS. Declarant hereby reserves the Declarant Control Period by which Declarant may unilaterally appoint, remove, and replace officers and directors of the Association, subject to the following conditions and provisions. Declarant's reservation and right to control the Association by appointing officers and directors is independent of Declarant's reservations and rights to control the development, expansion, Build-Out, and Sell-Out of the Property.

C.6.1. Duration. Declarant intends for the Declarant Control Period, as defined above, to be the maximum amount of time permitted by this Declaration and applicable law. No act, statement, or omission by the Association may effect termination of the Declarant Control Period earlier than the term stated in this Appendix. Declarant, however, may terminate the Declarant Control Period at any earlier time by signing and acknowledging a notice of voluntary termination that is recorded in the Real Property Records of Tarrant County, Texas.

C.6.2. Independent Reservation. Notwithstanding badly written applicable laws that link a declarant's control of real property development with its control of the governing body, Declarant and this Declaration recognize the independence of those realms and functions. Declarant may terminate its reserved right to appoint officers and directors of the Association without affecting any of Declarant's other rights and reservations under this Declaration or applicable law.

C.6.3. Officers & Directors. During the Declarant Control Period, the board may consist of 3 persons, or any larger number chosen by Declarant. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the below-described Chapter 209 Election. Declarant's unilateral right to remove and replace officers and directors applies only to Declarant's appointees.

C.6.4. Chapter 209 Election. On the date of this Declaration, Sec. 209.00591(c) of Chapter 209 of the Texas Property Code requires an election (the "**Chapter 209 Election**") within 120 days after the conveyance of 75 percent of the lots stated above as the Maximum Size, at which at least one-third of the board must be

Unofficial Document

© 2017. Sharon Reuler, P.C. All Rights Reserved.

elected by owners other than Declarant. Because Declarant continues to control the board by appointing a majority of directors, the Chapter 209 Election is distinguishable from the election that occurs at the turnover meeting. A director elected at the Chapter 209 Election serves until the earlier of two years or the turnover meeting, at which time the seat will be filled by election. If an elected director vacates the seat during the term, it must be filled with an elected director at the next annual meeting or at any special meeting called for that purpose. Declarant construes the applicable law to mean 120 days after 75 percent of the lots that may be created in the fully expanded development have been improved with homes and conveyed to owners other than Builders. The conveyance of vacant lots does not count toward the 75 percent requirement.

Declarant appoints HOA leaders until almost all the homes are built and sold.

C.6.5. Proxy Participation. Any director appointed by Declarant may participate in person or by proxy in meetings of the board. Declarant appointees who are employees, principals, or agents of Declarant are automatically holders of each other's proxy by virtue of this Subsection. The proxy created by this Subsection automatically self-renews every three months as long as Declarant is authorized to appoint a person to the board. This Subsection constitutes the writing required by applicable law. If not prohibited by applicable law, a director who participates by proxy under this Subsection may be counted toward a quorum of board members.

C.7. ASSOCIATION GOVERNANCE.

C.7.1. Annual Meetings. During the Declarant Control Period, the board may use its discretion in setting the agenda for meetings of the Association, and is not bound by the order of business stated in the Bylaws. Annual meetings during the Declarant Control Period may be informational only. If the Association gives notice of one meeting of members during the year, the meeting will be deemed to be the annual meeting of the Association whether or not it is so designated in the notice.

C.7.2. Board Meetings. During the Declarant Control Period, to the extent not prohibited by applicable law, meetings of the board of directors are permitted but not required. The Bylaws provision that requires periodic board meetings becomes effective when the Declarant Control Period ends.

C.7.3. Bylaws. During the Declarant Control Period, the board may use its discretion in applying the provisions of the Bylaws, which ~ during the Declarant Control Period only ~ must be construed as permissive (not mandatory), aspirational, and within the sole discretion of the board, to the extent permitted or not prohibited by applicable law.

C.7.4. Power of Attorney or Proxy. In connection with its sale of lots to Builders, Declarant may obtain a specific power of attorney or a general appointment of proxy to exercise the voting rights of owners who are members of the Builder Class in order to retain Declarant's reserved right to control the appointment of all officers and directors of the Association for the maximum period permitted by applicable law.

C.7.5. Turnover Meeting. The "**turnover meeting**" is a special meeting of Association members called by Declarant or by the Declarant-controlled board for the purpose of transferring control of the Association's governance from the Declarant-controlled board to a board of directors elected by the Association members.

C.7.5.1. Purpose. At the turnover meeting, the owners will elect directors to the board. The single-purpose turnover meeting may be combined with any other Association meeting for which proper notice is given. Regardless of the timing specified in the Bylaws for the annual meeting, an annual meeting may be called to coincide with the turnover meeting to avoid the cost of conducting two membership meetings in a 12-month period.

C.7.5.2. Timing, Notice, Quorum. Declarant, alone, is authorized to determine the date, time, and place of the turnover meeting. Notice of the turnover meeting will be given no later than 120 days after the end of the Declarant Control Period. For the turnover meeting, owners present in person or by proxy constitute a quorum.

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

C.7.5.3. Terms. Directors elected at the turnover meeting will serve terms that are staggered according to the Bylaws, some directors serving terms that are one year longer than the terms of other directors.

C.7.6. Notice and Quorum. During the Declarant Control Period, notice of each Association meeting must be given to Declarant, whether or not Declarant owns a lot in the Property. The presence of Declarant, in person or by proxy, is required to attain a quorum for any meeting of the Association during the Declarant Control Period. Declarant may waive this requirement in writing on a meeting-by-meeting basis. However, Declarant's waiver may not be assumed, deemed, or construed from circumstances, omissions, or verbal statements. A meeting of the Association called during the Declarant Control Period is not valid without Declarant's presence or a written waiver signed by Declarant prior to the start of the meeting.

C.8. ACTION IN LIEU OF BOARD. During the Declarant Control Period, Declarant has the right - in its capacity as Declarant - to act for or on behalf of the Association without the formality of board action. Declarant may perform any action that the board may take under the Governing Documents or applicable law, such as (for illustration only) calling a meeting of Association members or adopting the Association's annual budget. This right and reservation supplements any provision suggesting or requiring board action during the Declarant Control Period and may be exercised for any purpose.

C.9. VETO OVER CERTAIN BOARD DECISIONS. Certain decisions by the board, such as choice of management, adoption of an annual budget, and use of websites and social media, may affect the appearance and condition of the Property, the quality of life for residents, the costs of home acquisition and ownership, and marketability of homes in the Property. For itself and Builders, Declarant may have a vested interest in the way the Property is maintained and the Association managed until Sell-Out. Through Sell-Out, Declarant has the continuing unilateral right to veto, reverse, or modify decisions by the board which Declarant has reason to believe will adversely impact the Build-Out or Sell-Out of the Property. This Section applies during and after the Declarant Control Period, even if Declarant voluntarily terminates control of the Association earlier than the maximum period of Declarant control. The Association may not evade the effect of this Section by refusing to accept financial or other types of assistance from Declarant. Although this right of veto cannot be waived prior to Sell-Out, if requested by the Association, Declarant may waive its veto on a decision-by-decision basis.

C.10. DECLARANT AS EX-OFFICIO BOARD MEMBER. Declarant hereby reserves the right to serve on the board in an ex-officio capacity when the Declarant Control Period ends, for the remainder of the Declarant Class membership. Only Declarant may appoint the person who serves as the ex-officio director, with full power to remove and replace the appointee, who serves at the pleasure of Declarant. As an ex-officio member of the board, Declarant has the same rights and privileges as do all other directors, including the right to vote. As an ex-officio director, Declarant is not subject to recall, removal, or term limits.

C.11. ADVISORY & ARCHITECTURAL COMMITTEES. During the Declarant Control Period, the board may appoint any number of committees pursuant to the authority and procedures stated in the Bylaws. This Section pertains to two committees that may be of particular interest during the Declarant Control Period. Although committee appointments are made by the board, the board may invite nominations from owners, or may provide owners with a straw poll opportunity to recommend candidates.

C.11.1. Advisory Committees. During the Declarant Control Period, the board may appoint one or more committees comprised of owners or residents to assist the board in an advisory capacity by contributing the perspectives of residents and owners. The committee may be referred to as an "advisory committee," "advisory board," "shadow board," or by any other name that is commonly used by property owners associations. The board may adopt a policy of delegating to the Association's manager the responsibility for appointing and working with such committees. The policy may provide that all duties of the board under the Bylaws article titled "Committees" will be construed to mean "the board or the manager pursuant to a policy adopted by the board."

C.11.2. Architectural Review Committee. During the Declarant Control Period, the board appoints the ARC, which may consist of (1) Declarant only as a "committee of one," (2) principals or employees of Declarant, (3) independent design professionals, such as architects and engineers, (4) one or more Builders, (5) owners appointed by Declarant, (6) owners recommended by owners other than Declarant, or (7) any combination of the forgoing. At all times, the chair and members of the ARC serve at the pleasure of the board, which may remove and replace

© 2017. Sharon Reuler, P.C. All Rights Reserved.

appointees. Declarant may, from time to time, and solely at Declarant's discretion, appoint an ARC comprised solely of owners other than Declarant and Builders. Decisions by the ARC are at all times subject to review and veto by the board. The ARC has no authority over vacant lots and no authority over lots owned by Declarant or Builders. No authority granted to the ARC, even by the board, may ever be construed to give the ARC jurisdiction over new homes and related improvements on vacant lots.

C.12. FINANCIAL RIGHTS & RESERVATIONS. Declarant hereby reserves the following financial rights, reservations, and duties regarding the Association's budget and financial functions, which are independent of Declarant's reservation and right to control the appointment of officers and directors, and Declarant's reservation and right to control the development, build-out, and sell-out of improvements in the Property.

During Build-Out, the HOA's budget may be based on projections and assumptions that may or may not be realized. So, rates of assessment may change during and after Build-Out.

C.12.1. Annual Budget. Declarant or the Declarant-appointed board will approve an estimated projected annual budget for the Association on which regular assessments are based. From time to time during the Declarant Control Period, as Declarant deems appropriate, Declarant may unilaterally revise and republish the Association's annual operating budget and the corresponding rate of assessment for the lots. Such a budget adopted by Declarant for the Association does not require approval by the board. Alternately, assessment and budget changes may be adopted by the board.

C.12.1.1. Purposes. During the Declarant Control Period, the annual budget has three primary purposes. First, to inform homebuyers about the typical types and relative sizes of expenses that the Association may be expected to incur when their community is Sold-Out and they control the Association. Second, to yield a rate of assessment that is more affordable for the initial homebuyers than if the Association's expenses were divided among only owners of completed homes prior to Sell-Out. Third, to serve as a budget snapshot that can be used in the home marketing program for a relatively long period of time during the community's development.

C.12.1.2. No Warranty. For itself and the Association, Declarant hereby disclaims and disavows any warranty or representation that may be attributed to the annual budget adopted during the Declarant Control Period. The annual budget is not a warranty or representation by Declarant or by the Association that the types of budgeted expenses or their relative sizes are accurate or complete. Nor is it a warranty or representation that the Property or the Association will achieve the budget's assumptions. Nor is it a warranty or representation by Declarant or the Association that the Association will annually incur or fund every category of expense that is shown on the budget, or that the relative size of an expense category will be achieved. Neither the Association nor any owner has a right or expectation of being reimbursed by Declarant or by the Association for a budgeted line item that is not realized, or that is not realized at the projected level.

C.12.1.3. Assumptions. The annual budget may be based on any number of assumptions that are customary for Declarant-prepared budgets in the local marketplace, such as assumptions that (1) the Property is Built-Out, Sold-Out, and fully occupied, (2) owners of all lots subject to assessment pay assessments in full and on time, (3) the Property enjoys a level of service and maintenance that is typical for similar types of developments in the general area of the Property, and (4) no inflation or increase in the costs of goods and services from the date on which the budget is prepared. All such assumptions are presumed to be reasonable for this purpose.

C.12.2. Declarant's Financial Responsibility. A lot owned by Declarant or by an affiliate of Declarant is not subject to mandatory assessment by the Association and will not become subject to assessment by the Association until the date title is transferred to an owner other than Declarant or a Declarant affiliate. Because Declarant establishes the Association's budget and the rate of assessment during the Declarant Control Period, Declarant has an obligation to ensure that the Association's operating expenses are paid for that period. **During the Declarant Control Period only**, Declarant is responsible only for the Expected Shortfall. For any budget period during the Declarant Control Period in which the Actual Shortfall exceeds the Expected Shortfall, Declarant may (a) fund some or all of the difference, (b) direct the board to reduce the Association's expenses by reducing services, or (c) direct

SOV
Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

the board to fund the difference by raising the rate of assessment. **On termination of the Declarant Control Period**, Declarant ceases being responsible for shortfalls and the owner-elected board of directors will adopt a budget for the Association that is capable of being funded completely by owners without any contribution by Declarant. Under any circumstance, Declarant is not liable to the Association for more than the amount that Declarant would pay if Declarant were liable for assessments on the unsold lots in the same manner as any other owner. This may not be construed to create a per lot assessment liability for Declarant.

C.12.3. Reserves. The annual budget may show an annual contribution to reserves or to a contingency fund to illustrate to homebuyers the types of expenses they may expect to fund after the Declarant Control Period. During the Declarant Control Period, a budgeted line item for reserves is not a guaranty that the Association's reserves will be funded from regular assessments or from any other source. Declarant has no duty to contribute to the Association's reserve accounts. If the Declarant-controlled Association does not collect initial reserve contributions from owners at time of purchase, after the Declarant Control Period the Association will levy a special assessment to establish initial reserve accounts, and will thereafter collect initial reserve contributions in connections with transfers of title.

Reserves aren't funded by Declarant.

C.12.4. Commencement of Assessments. Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. Prior to the first levy, Declarant is responsible for the operating expenses of the Association as they accrue.

C.12.5. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

C.12.6. Annual Audit. During the Declarant Control Period, audits of the Association's financial records are optional (not required) from year to year, and from time to time, including any audit required by the Bylaws.

C.12.7. Enhancements. Until Sell-Out, Declarant - solely at Declarant's discretion - may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, seasonal color in landscaping, and recreational personnel. If such enhancements are included in the Association's annual operating budget they must be identified as voluntary contributions by Declarant.

C.12.8. Loans. Nothing in this Appendix may be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized in the books and records of the Association.

C.12.9. Declarant's Right to Inspect & Correct Accounts. Until five years after the end of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association's financial books, records, and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Governing Documents or applicable law. This Section may not be construed to create a duty for Declarant or a right for the Association. In support of this reservation, each owner, by accepting an interest in or title to a lot, hereby grants to Declarant a right of access to the Association's books, records, and accounts that is independent of Declarant's rights during the Declarant Control and as the Declarant Class member of the Association, for the limited purpose of this Section and only to the extent necessary to enable Declarant to exercise its rights under this Section. **This Subsection survives Sell-Out, if Sell-Out occurs within five years after the end of the Declarant Control Period.**

C.13. RIGHT OF REIMBURSEMENT FOR SHORTFALL LOANS. While Declarant controls the Association, Declarant may from time to time, and solely at Declarant's discretion, provide financial assistance to the Association. Providing financial assistance one time, or from time to time, does not obligate Declarant to provide additional or continual financial assistance. The purpose of this Section is to describe the relationship between Declarant and the Association regarding Declarant's financial support and the duty of the Association to reimburse Declarant for some of Declarant's contributions

© 2017. Sharon Reuler, P.C. All Rights Reserved.

under certain circumstances. In case of conflict between this Section and other provision of the Declaration, this Section controls.

C.13.1. Reservation. Declarant hereby reserves the right to be reimbursed by the Association for any shortfall loan and hereby creates an affirmative duty for the Association to fund the reimbursement if and when Declarant exercises this right.

C.13.2. Association's Duty. The Association is responsible for monitoring expected and actual shortfalls, identifying the differences that are eligible for reimbursement, and for reimbursing Declarant as targeted funds are received, without demand by Declarant. **The Association's duties under this Section do not terminate at the end of the Declarant Control Period.**

No deep pocket.
Declarant isn't required to fill holes in the budget created by owners who don't pay assessments.

C.13.3. Examples. Circumstances that are capable of resulting in shortfall loans include without limitation: (1) the failure of owners to pay assessments to the Association; (2) expenses pre-paid by the Association for which an owner or a third party is liable; and (3) any expense pre-paid by the Association for which a special assessment or increase in regular assessments is subsequently levied, or for which the Association obtains bank funding.

C.13.4. Shortfall Loan. A shortfall loan arises automatically, with or without formality. A shortfall loan may be evidenced by a promissory note executed by the Association in favor of Declarant or a person or entity designated by Declarant. A shortfall loan may be further secured by a lien against the common areas contained in a publicly recorded lien instrument executed by the Association. The Association will execute loan and security documents if so requested by Declarant. A shortfall loan incurs no interest and will be repaid - without demand - as the Association receives reimbursement of prepaid expenses, payment of delinquent assessments, or funding from loans or levied assessments. If a rate of interest on the shortfall loan will be imputed, the rate will be six percent per annum. Unless a promissory note specifies a different plan of payment, the Association will budget for shortfall loan repayment in a manner that retires 10 percent of the shortfall loan each year for 10 years.

TRANSFER-RELATED FEES FOR NEW HOME SALES.

C.14. HOA SALE FEES ON NEW HOME SALES. This Section pertains to "**New Home Sales**", meaning the sale by Declarant or a Builder to a homeowner of a lot that is improved with a newly constructed dwelling, or a vacant lot with a contract for construction of the first dwelling. The request for or issuance of a "resale certificate" does not convert a New Home Sale into a Home Resale for purposes of this Declaration.

C.14.1. Amounts. On or before the closing of a New Home Sale to a purchaser other than Declarant, a Successor Declarant, or a Declarant-affiliate, the purchaser is liable for the below-stated HOA Sale Fees:

(1) **$150.00** payable to the Association for its reserve funds.
(2) **$150.00** payable to the Association for its operating funds.
(3) If any, the customary administrative HOA Sale Fees, payable to the Association or its manager.

C.14.2. Operating Funds. The contribution to the Association's operating funds may be used to defray Declarant's obligation, if any, for the Association's operating expenses that are not funded by regular assessments received from other owners during the Declarant Control Period. After the Declarant Control Period, the Association will transfer to Declarant the initial operating fund contributions received from buyers of New Homes.

C.14.3. Liability. If HOA Sale Fees are not collected from a New Home purchaser at closing, Declarant is not thereafter liable for the contribution, and Declarant reserves the right (but not the duty) to waive the purchaser's liability for HOA Sale Fees on a case by case basis. Declarant acknowledges that this condition may create an inequity among the owners, but deems it a necessary response to the volume and diversification of closing New Home Sales.

© 2017. Sharon Reuler, P.C. All Rights Reserved.

C.15. HOA SALE FEES ON VACANT LOTS. This Section pertains to the sale and purchase of vacant lots or tracts of land prior to Build-Out. A request to the Association for a "payoff" or statement of assessments in connection with the purchase or closing of a vacant lot or tract may be satisfied with an assessment estoppel letter, and may not be treated as a request for "subdivision information" which triggers a resale certificate. On a bulk sale (multiple lots or tracts), a request to the Association for a resale certificate will be satisfied with a single resale certificate for the multi-lot or multi-tract transaction. In this Section, the term "Declarant" applies to its affiliates and successors.

C.15.1. Declarant Not Liable. The conveyance of a vacant lot or tract to Declarant is not subject to HOA Sale Fees unless so provided in the contract of sale to which Declarant is a party. This exemption applies to a successor Declarant who was a Builder prior to the assignment. Declarant is not liable for HOA Sales Fees that are not collected from a purchaser.

C.15.2. Builders. The conveyance of a vacant lot or tract by Declarant is treated as a "New Home Sale" for purposes of collecting HOA Sale Fees from the purchaser (typically a Builder), subject to the exclusive right of Declarant to modify or waive the obligation for HOA Sale Fees by contract with the purchaser. Declarant may negotiate different modifications or waivers with each Builder and for each contract. Conveyances of vacant lots or tracts between Builders are treated like New Home Sales for purposes of collecting HOA Sale Fees.

(End of Appendix C)

Unofficial Copy

© 2017. Sharon Reuler, P.C. All Rights Reserved.

APPENDIX D
TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR GLENWYCK

NOTICE OF POSSIBLE OIL & GAS ACTIVITY AFFECTING THE SUBDIVISION

Oil and natural gas are found in most parts of Texas, making Texas one of the largest oil and gas producing regions on Earth in the era in which Glenwyck (the "**Subdivision**") is developed. As exploration and development technologies evolve, new areas of the state become attractive sources for exploration, drilling, and production. No one can guaranty where the next promising oil or gas field will be located. Nor can anyone guaranty that a particular location will never be used for oil or gas production. Someday your home may be closer to an oil or gas well than you expect. Or the nearby well that has been dormant for years may be revived. The purpose of this Notice is to make you aware that Declarant, Builders, and the Association have no control over, nor liability for, past, present, or future oil and gas activities within or near the Subdivision.

As used in this Notice, the following terms have specific meanings:

"**Fixtures**" refers to existing, abandoned, or future pipelines, pipeline rights-of-way, pipeline easements (collectively "**pipeline**"), drill sites, wells, equipment, and facilities for the exploration, extraction, and transportation of oil, natural gas, petroleum products, or other gases or liquids located near or within a drill site or pipeline, whether now existing or created in the future.

"**Uses**" means rights, including easements, to access, operate, inspect, install, maintain, repair, and remove Fixtures, and the exercise of such rights from time to time and at any time, by an owner or operator of a drill site or pipeline.

"**We**" and "**Us**" means, individually and collectively, Declarant, Builders, the Association, and anyone affiliated with them, such as their respective officers, directors, employees, agents, parent company, subsidiaries, affiliates, heirs, personal representatives, successors, and assigns.

"**You**" and "**Your**" refers to any person acquiring, owning, or occupying a lot or any portion of the Subdivision, and the person's heirs, personal representatives, successors, and assigns.

By contracting to purchase a lot, and by acquiring an ownership or occupancy interest in a lot or any portion of the Subdivision:

YOU ACCEPT THE OBLIGATIONS AND CONSEQUENCES OF OWNERSHIP AND OCCUPANCY, INCLUDING THE RISK THAT FIXTURES AND USES MAY OR MAY NOT BE PRESENT WITHIN OR NEAR YOUR LOT OR THE SUBDIVISION, NOW OR IN THE FUTURE, AND THE RISK THAT THE FIXTURES AND USES MAY NOW OR AT ANY FUTURE TIME NEGATIVELY AFFECT YOUR LOT OR THE SUBDIVISION, SUCH AS *(by way of example, without limitation)* (1) YOUR HEALTH, SAFETY, OR WELFARE, (2) QUIET ENJOYMENT OF YOUR LOT, (3) USE OF A COMMON AREA FOR ITS INTENDED PURPOSE, (4) CONTAMINATION OF SOIL, AIR, OR GROUNDWATER ON YOUR LOT OR IN THE SUBDIVISION, AND (5) DIMINUTION OF VALUE OF YOUR LOT, OTHER PORTIONS OF THE SUBDIVISION, OR PROPERTY NEAR THE SUBDIVISION.

YOU ACKNOWLEDGE THAT WE ARE NOT LIABLE FOR DAMAGE TO PROPERTY, PERSONS, OR OTHER BEINGS CAUSED BY FIXTURES, USES, OR THE ACTIONS OR OMISSIONS OF ANY THIRD PARTY, SUCH AS THE OWNER OR OPERATOR OF A DRILL SITE OR PIPELINE.

YOU RELEASE EACH OF US FROM ANY AND ALL COMPLAINTS, DEMANDS, CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, COSTS, INJURIES, OR OTHER LIABILITY THAT YOU HAVE OR MAY HAVE, AT ANY TIME, THAT RELATE IN ANY WAY TO ANY FIXTURE OR USE, PAST, PRESENT, OR FUTURE.

(End of Appendix)

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Official Copy

APPENDIX E
RETAINING WALLS

E.1. GENERAL. Retaining walls are used to stabilize soil, modify slopes, level sites, and adjust for grade or elevation differences between adjoining parcels of land, such as between two lots. A retaining wall is hereby deemed to benefit the parcel on each side of the wall ~ to be mutually beneficial ~ even though the wall may be entirely within the legal boundaries of only one of the adjacent parcels. As used in this Appendix, the following terms, whether or not capitalized, have specified meanings unless a different meaning is apparent from the context in which the term is used:

> "**Continuous Retaining Wall**" means a retaining wall that extends - on either side - beyond the boundaries of a particular parcel, thereby serving two or more parcels on at least one side of the wall.
>
> "**Parcel**" means any piece of real property that contains, abuts, supports, or is supported by a retaining wall within or adjacent to the Property, such as lots and common areas. Depending on its elevation in relation to the retaining wall, a parcel is either a "**Higher Parcel**" (having the higher elevation in relation to the retaining wall) or a "**Lower Parcel**" (having the lower elevation in relation to the retaining wall).
>
> "**Retaining Wall**" means a structure designed to restrain soil between two elevations. Depending on its location, a retaining wall is either a "**Shared**" or "**Perimeter**" retaining wall. A "**Shared Retaining Wall**" is located between or along the boundary shared by two parcel within the Property. A "**Perimeter Retaining Wall**" is located on or along the perimeter of the Property or on or along public property (such as a public right-of-way, street, park, or creek).

E.1.1. Applicability. This Appendix applies to every parcel in Glenwyck that is on either side of a retaining wall, regardless of whether the retaining wall is located exactly on the boundary between two parcels, entirely on one of the two parcels, or partly on one parcel and partly on the other. For retaining walls on the perimeter of the Property, see also the "Perimeter Retaining Walls" Section below. A publicly recorded parcel-specific document that addresses retaining walls controls the parcel to which it pertains. This Appendix does not pertain to a retaining wall that is entirely within a parcel and does not support another parcel, such as a raised planter bed.

E.1.2. Rule of Law. To the extent not inconsistent with this Appendix or (if any) an enforceable agreement between owners of adjacent parcels, a retaining wall is subject to the general rules of law regarding party walls, retaining walls, and liability for property damage due to negligence, willful acts, or omissions.

E.2. ENCROACHMENTS AND EASEMENTS. If a retaining wall is on one parcel or another, the retaining wall is nevertheless deemed to be on the dividing line between the parcels for purposes of this Appendix. The owner of the parcel on each side of the retaining wall hereby grants to the owner of the parcel on the other side of the retaining wall the following easements across his parcel:

E.2.1. Access Easement. The owner of the Lower Parcel and the owner of the Higher Parcel hereby grant each other a reciprocal access easement across their respective lots for maintenance, repair, replacement, or reconstruction of the retaining wall, as necessary to effect the purposes and provisions of this Appendix.

E.2.2. Encroachment Easement. The owner of the Lower Parcel and the owner of the Higher Parcel hereby grant each other an easement for the existence and continuance of any encroachment by the retaining wall as a result of construction, repair, shifting, settlement, or movement in any portion of the retaining wall, so that the encroachment may remain undisturbed as long as the retaining wall stands.

E.2.3. Use Easement. The owner of the Higher Parcel hereby grants to the owner of the Lower Parcel a non-exclusive and perpetual right and easement of enjoyment and use over (1) the exterior surface of the retaining wall for use as a perimeter wall or fence of the Lower Parcel, and (2) any portion of the Higher Parcel that is at or near the elevation of the Lower Parcel. The owner of the Lower Parcel hereby grants to the owner of the Higher Parcel a non-exclusive and perpetual right and easement of enjoyment and use over any portion of the Lower Parcel that is at or near the elevation of the Higher Parcel.

E.3. MAINTENANCE, REPAIR & ALTERATION. In addition to this Appendix, owners must comply with Retaining Wall Maintenance Specifications in the Owners Manual and any other ARC promulgated rules specific to retaining walls.

Unofficial Document

© 2017. Sharon Reuler, P.C. All Rights Reserved.

E.3.1. Continuous Retaining Walls. A parcel owner is responsible for only the segment of a continuous retaining wall that abuts the owner's parcel. Owners of parcels with segments of a continuous retaining wall are expected to cooperate in performing maintenance, repair, and reconstruction ~ if and when needed.

E.3.2. Duty & Right to Repair. Whomever damages a retaining wall pays for the damage. The owner of a parcel, at the owner's sole expense, has a duty to repair all actual and consequential damage to the retaining wall emanating from an act, condition, or omission on or pertaining to the owner's parcel. The owner of either parcel has the right to repair or rebuild a damaged or destroyed retaining wall to its previous condition, and the owners of both parcels, their successors and assigns, have the right to the full use of the repaired or rebuilt retaining wall, subject to rights (if any) of reimbursement or contribution by the owner of the other parcel.

E.3.3. Maintenance Costs. The owner of each parcel is solely responsible for the cost of performing its duties under the Retaining Wall Maintenance Specifications. The owner of the Higher Parcel is solely responsible for the costs of repair, reconstruction, or replacement of the retaining wall, subject to the right of reimbursement or contribution from the owner of the other parcel under any rule of law regarding liability for negligence or willful acts or omissions or breach of duty. If an owner fails or refuses to pay his share of costs of repair or replacement of the retaining wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Tarrant County, Texas. The right of an owner to contribution from another owner is appurtenant to the land and passes to the owner's successors in title. The Association may (but is not required to) perform or fund the defaulting owner's share of the work on the retaining wall, the cost of which may be levied against the defaulting owner and his parcel as an individual assessment.

E.3.4. Variations by Agreement. Nothing in this Declaration or the Owners Manual may be construed to prevent owners of parcels that share a retaining wall from agreeing in writing to a different allocation of responsibilities or costs between themselves. Such an agreement is not binding on subsequent owners of either parcel unless the agreement is in the form of a deed restriction or mutual covenant, signed by the owners of both parcels, and recorded in the Real Property Records of Tarrant County, Texas.

E.3.5. Alterations. A retaining wall may not be altered in a manner that affects the use, condition, or appearance of the retaining wall to the other parcel without the prior written consent of the Architectural Reviewer and the owner of the other parcel.

E.3.6. Materials. Unless the Architectural Reviewer grants a variance, the material used to repair or reconstruct an existing retaining wall must substantially match the original retaining wall in quality and appearance. If the repair or reconstruction is on a segment of a continuous wall, an effort must be made to blend the work with the continuous wall of which it is part. The surfaces of new retaining walls that are visible from a street, common area, or adjacent parcel must be made of stone or other masonry material approved in writing by the Architectural Reviewer. Wood, including railroad ties, may not be used for retaining walls.

E.4. PERIMETER RETAINING WALLS. A retaining wall on the perimeter of the subdivision or along a public street within the subdivision is not automatically the responsibility of the Association. Even if a publicly recorded document, such as a plat, assigns responsibility to the Association, the Association may delegate that duty to owners of certain lots. **Generally, the Association is not responsible for any aspect of a Perimeter Retaining Wall that supports or is supported by a Glenwyck lot.**

E.4.1. Outsiders. This Appendix does not and cannot create an obligation for the owner of a parcel that is not subject to this Declaration, such as a parcel on the far side of a Perimeter Retaining Wall.

E.4.2. Important Notice. Notice is hereby given that a Glenwyck parcel with a Perimeter Retaining Wall may have no lawful right to access the adjacent parcel for purposes of inspecting, maintaining, repairing, and reconstructing the Perimeter Retaining Wall, if and when needed. If such access is needed, the Glenwyck parcel owner is solely responsible for obtaining permission to lawfully access the adjacent parcel. By acquiring an ownership interest in a Higher Parcel with a Perimeter Retaining Wall, each owner acknowledges that if access to the adjacent Lower Parcel is not available, other options for repairing or replacing the Perimeter Retaining Wall may result in excavation and removal of soil from the Higher Parcel, the practical loss of portions of the elevated and usable surface of the Higher Parcel, and substantially more expense than if the owner of the Higher Lot had unfettered access to the adjacent Lower Parcel to perform the required work.

(End of Appendix)

© 2017. Sharon Reuler, P.C. All Rights Reserved.

Unofficial Document