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AMENDED  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS

FOR  
BERRY CREEK

March 2019

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AMENDED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
  
FOR  
  
BERRY CREEK

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BERRY CREEK ("Declarant") is made this 11th day of March, 2019, by BERRY CREEK COMMUNITY ASSOCIATION, INC., a not for profit Oklahoma corporation, (hereinafter referred as the "Declarant" or "Association").

INTRODUCTION TO THE COMMUNITY

*CROSS CREEK, L.L.C., an Oklahoma limited liability company (hereinafter referred to as "CROSS CREEK"), filed the Declaration of Covenants, Conditions, and Restrictions for BERRY CREEK on April 2, 2003, in Book 1417, Page 765. Pursuant to proper notice and procedure, in accordance with the By-Laws, CROSS CREEK, the original Declarant, has designated BERRY CREEK COMMUNITY ASSOCIATION, INC. as successor Declarant effective on July 17, 2017. BERRY CREEK COMMUNITY ASSOCIATION, INC., as the successor Declarant, has approved, through a majority vote of the owners and adopted this Amended Declaration of Covenants, Conditions, and Restrictions, and does hereby, amend the original Declaration of Covenants, Conditions, and Restrictions filed on April 2, 2003, in its entirety, all as more particularly set forth herein.*

*BERRY CREEK COMMUNITY ASSOCIATION, INC. has amended this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of BERRY CREEK as a planned community. The BERRY CREEK COMMUNITY ASSOCIATION, INC. and this Declaration reflect goals and aspirations and possess the powers necessary to develop a vibrant, cohesive, active community.*

This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. BERRY CREEK COMMUNITY ASSOCIATION, INC. is an association comprised of all Unit Owners in BERRY CREEK to own, operate, and maintain common property and community improvements and to administer and enforce the Governing Documents for BERRY CREEK.

Article I  
CREATION OF THE COMMUNITY

1.1. Development Intent. This Declaration shall be binding on and shall vest to the benefit of all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns.

This document does not and is not intended to create a condominium within the meaning of the Oklahoma Unit Ownership Estate Act, Title 60, Chapter 11, Section 501 et. seq. of the Oklahoma Statute.

1.2. Duration. Unless terminated as provided below, this Declaration shall have perpetual duration. Unless otherwise provided by Oklahoma law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. After 20 years from the date of recording, the Declaration may be terminated only by an instrument in writing, signed by a majority of the then Owners and recorded in the Official Records, which specifies the termination of this Declaration.

1.3. Governing Document. This Declaration together with the By-Laws of BERRY CREEK COMMUNITY ASSOCIATION, INC., the Certificate of Incorporation of BERRY CREEK COMMUNITY ASSOCIATION, INC., (collectively, the "Governing Documents") shall contain the standards for the Properties and the Association. The Governing Documents shall be supplemented by the Use Restrictions and Rules and Berry Creek Design Standards, and resolutions of the Board of Directors.

## Article II CONCEPTS AND DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, which the Association does not own but which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the Association's responsibility.

2.2. "Articles": The Certificate of Incorporation of BERRY CREEK COMMUNITY ASSOCIATION, INC., as filed with the Oklahoma Secretary of State.

2.3. "Association": BERRY CREEK COMMUNITY ASSOCIATION, INC., an Oklahoma not for Profit Corporation, its successors and assigns.

2.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Article VIII.

2.5. "Board of Directors or Board": The body responsible for administration of the Association.

2.6. "Builder": Any Person which purchases one or more Units or parcels of land within the Properties for the purpose of constructing improvements for later sale to consumers and/or resale in the ordinary course of such Person's business.

2.7. "By-Laws": The By-Laws of BERRY CREEK COMMUNITY ASSOCIATION, INC., as they may be amended from time to time.

2.8. "Common Area": All real and personal property which the Association now or hereafter owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.



2.9. “Common Expenses”: Actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

2.10. “Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing at BERRY CREEK. Such standard shall be established initially by the Association and may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and demands of BERRY CREEK change.

2.11. “Declarant”: BERRY CREEK COMMUNITY ASSOCIATION, INC., a not for profit corporation, was designated as the successor Declarant for this Declaration in an instrument executed by Mike Ebert, Manager of CROSS CREEK L.L.C, an Oklahoma limited liability company, on July 17, 2017 and recorded in the Official Records in the office of the County Clerk of Payne County, Oklahoma

2.12. “Design Standards”: Architectural, design, development, and other guidelines, standards, controls, and procedures including, but not limited to, application and review procedures, adopted and administered, as they may be amended, pursuant to Article IV. The Community-Wide Design Standards are attached as Exhibit “C” and incorporated by reference, as they may be modified, canceled, limited or expanded under Article IV.

2.13. “Design Review Committee (the DRC)”: The committee which the Board of Directors may create, subject to the provisions of Article IV, and at such time as it shall determine in its discretion, to review new construction and administer and enforce architectural standards.

2.14. “Member”: A Person entitled to membership in the Association. Every Owner shall be a Member, subject to the limitations on co-Owners as provided in Article VI and the By-Laws.

2.15. “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument.

2.16. “Mortgagee”: A beneficiary or holder of a Mortgage.

2.17. “Neighborhood”: The Association may create one or more separate “Neighborhoods”, within the Properties, which may consist of one or more, but less than all Units. Separate Neighborhoods shall be created for the purposes of sharing and/or receiving other benefits or services from the Association which are not provided to all Units within the Properties, and for sharing the expenses of such benefits or services from the Association which are not provided to all Units within the Properties. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units shall constitute a sub-Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

2.18. “Neighborhood Assessments”: Assessments levied against units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Articles V, VII, and VIII.

2.19. “Neighborhood Association”: An owner’s association, established by or with Association’s approval, having jurisdiction over any Neighborhood concurrent with, but subordinate to, the Association.

2.20. “Neighborhood Expenses”: Actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners of Units within a particular

Neighborhood or Neighborhoods, which may include reasonable reserves, as the Board may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

- 2.21. "Official Records": The Office of the County Clerk of Payne County, Oklahoma.
- 2.22. "Owner": Collectively, one or more Persons who hold record title to any Unit, but excluding in all cases any party holding an interest merely as security for performance of an obligation. If a Unit is sold under a recorded contract of sale, then, upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.
- 2.23. "Person": A human being, a corporation, a limited liability company, a partnership, a trust or any other legal entity.
- 2.24. "Properties" or "BERRY CREEK": The real property described in Exhibit "A."
- 2.25. "Reviewer": The body authorized to exercise architectural review pursuant to Article IV.
- 2.26. "Special Assessment": Assessments levied against all Owners to cover unanticipated costs, or more particularly described in Article VIII.
- 2.27. "Specific Assessment": Assessments levied on one or more but less than all Units to cover costs attributable to such Units, as more particularly described in Article VIII.
- 2.28. "Supplemental Declaration": An amendment or supplement to this Declaration which imposes, expressly or by reference, additional restrictions and obligations on the land described therein.
- 2.29. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for the development, use, and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Official Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, but shall not include Common Areas or property dedicated to the public.
- In the case of a portion of the Properties intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such Property shall be deemed to be a single unit until such time as a subdivision plat is filed of record with respect to all or a portion of the Property. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Unit.
- 2.30. "Use Restrictions": The use restrictions and rules attached as Exhibit "B" and incorporated by reference, as they may be modified, canceled, limited or expanded under Article III.



## CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

*Standards for use and conduct, maintenance, and architecture within BERRY CREEK are what give the community its identity, provide the framework for meeting stated goals and objectives, and make it a place that people want to call "home." This Declaration establishes procedures for rulemaking as a dynamic process which sets initial, high standards for the quality of the Community, and also allows the community standards to evolve as the Community changes and grows.*

### Article III USE AND CONDUCT

3.1. Framework for Regulation. A general plan of development was established for the Properties as a planned community in order to enhance all Owners' quality of life and collective interests and the aesthetics and environment within BERRY CREEK and to engender a pride of place and sense of community within the Properties. To accomplish this objective, the Properties are subject to the land development, architectural, and design provisions set forth herein and the "Berry Creek Design Standards", which are incorporated herein, the other provisions of this Declaration governing individual conduct and use of or actions upon the Properties, and the standards, rules and restrictions promulgated pursuant to this Article, all of which establish affirmative and negative covenants, easements, and restrictions on BERRY CREEK. The Unit Owners and the Property is also subject to certain "Use Restrictions and Rules." Notwithstanding the above, with respect to rules and regulations promulgated pursuant to this Article, the Board and the Members shall have the ability, in the manner set forth below, to respond to changes in circumstances, conditions, needs, and desires within the Community.

All provisions of this Declaration and any Association rules shall apply to all Persons on the Properties. The lessee and all occupants of leased Units shall be bound by the terms of the Governing Documents, whether or not the lease so provides. All Owners shall be responsible for inserting a provision in any lease informing the lessee and all occupants of the Unit of all applicable rules and use restrictions and Rules affecting the Unit or the Common Area.

#### 3.2. Rule Making Authority.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules as set forth in Exhibit "B". The Board shall send notice by mail to all Owners concerning any such proposed action at least ten business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such a vote on proposed action being taken.

Any such Rules shall become effective after compliance with Section 3.2(c) unless such Rules are disapproved at a meeting by Members representing more than fifty percent of the Members. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a Petition of the Members as required for special meetings in the By-Laws. If a meeting to consider disapproval of a Rule is requested by the Members prior to the effective date of such Rule, the Rule may not become effective until after such meeting is held.

(b) Alternatively, Members, at a meeting duly called for such purposes, may adopt Rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules and previously adopted Rules by vote of the Members representing more than fifty percent of the Members.



(c) At least thirty days prior to the effective date of any action under Section 3.2(a) or (b), the Board shall make a copy of the Rule available to each Owner electronically on the Association's website, specifying the effective date of such Rule. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board to modify, repeal, or expand the Declaration (with the exception of Exhibit "B" or "C") the By-Laws, the Articles or the Berry Creek Design Guidelines or to circumvent any requirements of the City of Stillwater, Oklahoma concerning development of the Properties. In the event of a conflict between the Community-Wide Design Standards and the Use Restrictions and Rules, the Design Standards shall control.

(e) Procedures required under this Section shall not apply to enactment and enforcement of administrative rules and regulations governing the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreation facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

3.3. Owners' Acknowledgment. By acceptance of a deed, each Owner acknowledges and agrees that they are subject to the Use Restrictions and Rules and Berry Creek Community-Wide Design Standards and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the use Restrictions. Each Owner further acknowledges that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and Rules and Berry Creek Community-Wide Design Standards may change from time to time.

3.4. Protection of Owners. Except as may be specifically set forth in the initial Use Restrictions and Rules, neither the Board nor the Members may adopt any rule in violation of any governmentally or constitutionally protected rights. Any rule prohibiting keeping ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the Rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance as determined by the Board or its designee. Any rule which would require owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. Notwithstanding the above, the rights conferred under this paragraph are for the benefit of affected Owners only and shall not be transferable or run with title to any Unit. No rule shall prohibit leasing or transferring any Unit, or require consent of the Association or the Board for leasing or transferring any Unit; provided, the Association or the Board may require a minimum lease term of up to twelve months on a parcel-by-parcel basis. The Association may require that Owners use lease forms approved by the Association. Unless otherwise specifically set forth in the Declaration, the Association shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the cost to the Association of its cost to administer that lease or transfer.

The limitations in this Section shall apply to rules only.

## Article IV

### ARCHITECTURE AND LANDSCAPING

4.1. General Requirement for Prior Approval. No structure shall be placed, erected, or installed on any portion of the Properties, no alterations of or additions to the existing landscaping, and no improvements (including staking, clearing, excavation, grading, and other site work, and exterior alteration of existing improvements) shall take place within the Properties except in compliance with this Article and the Design Standards promulgated pursuant to this Article and the Community-Wide Design Standards attached as Exhibit "C" and incorporated by reference, as they may be modified, canceled, limited or expanded under Article IV.

Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to this Article and shall be regulated by this Declaration and the Design Standards and require the approval of the Board/DRC under this Article. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to Association's activities nor to improvements to the Common Area by or on behalf of the Association. This Article shall not apply to activities of the City of Stillwater, Oklahoma performed on property owned by the City and used for public purposes so long as the City complies with the separate deed restrictions applicable to such property, if any.

4.2. Architectural Review.

(a) Design Review Committee. The Association's Board of Directors may appoint the members of the Design Review Committee (the "DRC"). Upon appointment, the DRC shall assume jurisdiction over architectural matters hereunder.

(b) Fees; Assistance. The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

4.3. Standards and Procedures.

(a) Design Standards. The Community-Wide Design Standards shall apply to construction and landscaping activities within the Properties, as provided in this Article. The Design Standards are incorporated within Exhibit "C" of this Declaration. The Association shall make the Design Standards available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Standards. The Design Standards shall contain general provisions applicable to all of the Properties, as well as specific provisions, which vary from one portion of the Properties to another depending upon location, unique characteristics, intended use, and any applicable zoning ordinances. The Design Standards are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Standards are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Standards does not guarantee approval of any application.

The Board shall have authority to amend the Design Standards. Amendments to the Design Standards shall not apply to require modification to or removal of structures previously approved. There shall be no limitation on the scope of the amendments to the Design Standards. The Board is expressly authorized to amend the Design Standards to remove requirements previously imposed or otherwise to make the Design Standards more or less restrictive in whole or in part.



Alternatively, Members, at a meeting duly called for such purposes, may adopt Design Standards which modify, cancel, limit, create exceptions to, or expand the previously adopted Design Standards by vote of the Members representing more than fifty percent of the Members.

The Association shall make the Design Standards available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Standards. The Design Standards are incorporated in Exhibit "C" of this Declaration and are recorded in the official records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Standards was in effect at any particular time.

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the Design Standards in effect at the time the plans for such improvements are submitted to the Board/DRC unless the Board/DRC has granted a variance in writing. So long as the Board/DRC has acted in good faith, its findings and conclusions with respect to appropriateness of applicability of, or compliance with the Design Standards and this Declaration shall be final.

(b) Procedures. Prior to commencing any activity within the scope of Section 4.2, an Owner shall submit an application for approval of the proposed work to the Board. Such application shall be in the form required by the Board/DRC and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, fencing, utility facilities layout and screening and/or fencing therefore, and other features that propose construction as required by the Design Standards and as applicable. The Board/DRC may require submission of such additional information as it deems necessary to consider any application.

In reviewing each submission, the Board/DRC may consider whatever reasonable factors it deems relevant, including, but not limited to, visual and environmental impact, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment and architectural merit. Decisions may be based purely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Board/DRC shall, within the period specified in the Design Standards, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) approval of Plans, or (ii) segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Standards, the reason for such finding, and suggestions for curing such objections. In the event, the Board/DRC fails to advise the submitting party by written notice within the period specified in the Design Standards of either the approval or disapproval and suggestions for curing objections, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited in the United States Postal Service by registered or certified mail, return receipt requested or in a nationally recognized courier service. Personal service of such written notice is sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project for which Plans have been approved within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Board/DRC for reconsideration. If construction is not completed on a project for which Plans have been approved within the period set forth in the Design Standards or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

4.4. Waiver of Future Approvals. Each Owner acknowledges that members of the Board/DRC will change from time to time and that interpretation, application and enforcement of the Design Standards may vary accordingly. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval. Should the Board/DRC permit nonconforming improvements through hardship or error, it shall not be construed as a waiver of future enforcement rights or permission for future noncompliance.

4.5. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Association, the Board and the DRC or any member of any of the foregoing shall not be held liable for any injury, damage, or loss arising out of the manner or quality of approved construction on or modification of any Unit. In all matters, the Board/DRC and its members shall be defended and indemnified by the Association.

4.6. Enforcement. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Use, unless approval to modify an application has been obtained. The Association shall be responsible for enforcement of this Article.

#### Article V MAINTENANCE AND REPAIR

5.1. Level of Maintenance Required. BERRY CREEK shall be maintained in a manner consistent with the Community-Wide Standard, all applicable covenants, and any development agreements or orders between Declarant and the City of Stillwater, Oklahoma. Each Person responsible for maintenance of any portion of the Properties shall maintain or provide for such maintenance in accordance with such standards.

Maintenance, as used in this Article, shall include, without limitation, repair and replacement, as needed, as well as such other duties, including irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Design Standard. The Board, may establish a higher Community-Wide Standard for portions of the Properties that are environmentally sensitive or that provide a greater than usual aesthetic value and may require additional maintenance for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, the Association, any Owner, or any other entity responsible for the maintenance of a portion of the Properties shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit in a manner consistent with the Community-Wide Design Standard and all applicable covenants and Use Restrictions and Rules unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

In addition to any other enforcement rights provided for in the Governing Documents, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Article XIII, herein.



The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Upon Board resolution, Owners of Units within the Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, costs of maintaining any signage, entry features, right-of-way, and open space between the Units within the Neighborhood and adjacent public roads and streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association. As an alternative, the Board may resolve that the Neighborhood Association, if any, shall perform such maintenance.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration, either by agreement with the Neighborhood Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed as a Neighborhood Assessment against Units within the Neighborhood to which the services are provided. Provision of services in accordance with this Section shall not constitute discrimination within a class.

5.4. Responsibility for Repair and Replacement. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit of building debris and maintain it in a condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds.

Requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

## COMMUNITY GOVERNANCE AND ADMINISTRATION

*Success of the Community is dependent upon support and participation of every owner in its governance and administration. The Declaration establishes BERRY CREEK COMMUNITY ASSOCIATION, INC., as the mechanism through which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership—the owners of property in the Community.*

*The governance structure is designed to empower the Association and its members to fulfill the developmental intent and to achieve a balance in the creation of both community and governance.*



## Article VI THE ASSOCIATION AND ITS MEMBERS

6.1. Functions of Association. The Association shall be (i) the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility; (ii) the primary entity responsible for compliance with and enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt; (iii) primarily responsible for monitoring compliance with and enforcing the Berry Creek Design Standards and Use Restrictions and Rules; and (iv) permitted to provide for and fund such community activities and services as deemed necessary, appropriate, or desired in accordance with the Governing Documents, or as may be required by the City of Stillwater, Oklahoma. The Association may delegate such responsibilities to committees or engage outside Persons to monitor and enforce the Berry Creek Design Standards and Use Restrictions and Rules under the Board's supervision. The Association shall perform its functions in accordance with the Governing Documents and Oklahoma law.

6.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

6.3. Exercise of Voting Rights. In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. A membership right of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.4. Neighborhoods. A Neighborhood Committee elected as provided in the By-Laws, or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to the Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate, shall be assessed against the benefited Units within such Neighborhood as a Neighborhood Assessment.

## Article VII ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Property conveyed by CROSS CREEK L.L.C to BERRY CREEK COMMUNITY ASSOCIATION, INC. shall be accepted by the Association and thereafter shall be maintained as Area of Common Responsibility by the Association at its expense for the benefit of its Members.

7.2. Maintenance of the Area of Common Responsibility.

The Association shall maintain and keep in good repair the Area of Common Responsibility. The Association may also maintain and improve other property which it does not own, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Design Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Units as part of the Base Assessment, without prejudice to the Association's right to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons,

The Area of Common Responsibility shall include, but need not be limited to: (a) all portions of and structures situated upon the Common Area; (b) landscaping within public rights-of-way within or abutting the Properties; (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless 75% of the Members agree in writing to discontinue such operation.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, the Covenant to Share Costs, or other recorded covenants, or agreements with the owner(s) thereof.

7.3. Insurance. The Association shall obtain certain forms and types of insurance coverage, as deemed appropriate by the Board. Premiums for such insurance coverage shall be deemed expenses of the Association. The types and limits of Insurance may be more fully detailed in the By-Laws of the Association.

7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents and the rules of the Association. The Board may impose sanctions for violation of the Governing Documents or any rule or regulation, after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation some or all of the following, in the discretion of the Board:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Declaration, the By-Laws or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;



(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Standards from continuing or performing any further activities in the Properties; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents or the Community-Wide Standard.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of the City of Stillwater, Oklahoma or statutes of the State of Oklahoma);
- (ii) To file liens against any units, for the purpose of enforcing these Covenants, Conditions, and Restrictions, to include any attorney fees and costs incurred in filing and enforcing any such liens; and
- (iii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough or funds are not available to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or stop the Association from enforcing any other covenant, restriction, or rule.

7.5. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically

provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Powers of the Association Relating to a Neighborhoods. No action of the Neighborhood Association, if any, shall become effective or implemented until and unless the Association shall have been given written notice of such proposed action and shall not have disapproved of the proposed action or unless such action is in strict compliance with guidelines set by the Board. The Association shall have ten days from receipt of the notice to disapprove any proposed action. The Association may disapprove of any action taken or contemplated by the Neighborhood Association which the Board reasonably determines to be adverse to the interest of the Association or its Members or any consistent with the Community-Wide Standards.

The Association also may require specific action to be taken by the Neighborhood Association to fulfill its obligations and responsibilities under this Declaration or any other applicable covenants. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association and (b) require that a proposed Neighborhood budget include the cost of such work.

Any action specified by the Association in a written notice pursuant to the foregoing paragraph shall be taken within the reasonable time frame set in such written notice. If the Neighborhood Association fails to comply with such requirements, the Association shall have the right to take such action.

7.7. Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to promote the health, safety and welfare of Owners and occupants of any Unit. Notwithstanding anything contained in the Governing Documents or any other document governing or binding the Association, neither the Association nor the Board shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Owner or occupant of any Unit or any tenant, guest, or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Unit and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities, if any, and may be required to execute specific liability waivers from time to time as a condition of such use.

Neither the Association nor the Board shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines, or utility sub-stations adjacent to, near, over, under, or on the Properties. Each Owner and occupant of a Unit and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines, utility sub-stations, and electromagnetic fields and further acknowledges that neither the Association nor the Board have made any representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations, or electromagnetic fields.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association or the Board to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association



or the Board, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

7.8. Provision of Services. The Association may provide services and facilities for the Members of the Association and for third parties. The Association shall be authorized to enter into contracts or other similar agreements with other entities to provide such services and facilities. In addition to Common Expense charges, the Board shall be authorized to charge additional use and consumption fees for selected services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

7.9. Security. It is the goal of all Owners to have a safe and healthy environment within BERRY CREEK. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties intended to make the Properties safer than they otherwise might be; provided, neither the Association nor its Board of Directors shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association nor its Board of Directors, shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Unit and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Units, and to the contents of Units and no Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entrance, neighborhood watch group, volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Properties.

## Article VIII ASSOCIATION FINANCES

8.1. Budgeting and Allocating Common Expenses. Not less than 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3.

The Base Assessment shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 8.10 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The budget shall become effective unless disapproved at a meeting by Members representing at least a majority of the total Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within 30 days after notice of the assessments.

Notice of assessments shall be posted in a prominent place within the Properties and included in the Association's website, if any. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.



8.2. Budgeting and Allocating Neighborhood Expenses. At least 30 days before the beginning of each fiscal year, the Board shall prepare a separate budget for each Neighborhood covering the estimated Neighborhood Expenses, if any, expected to be incurred on behalf of such Neighborhood during the coming year. The Board shall be entitled to set such budget only to the extent that (a) this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment, or (b) the Association expects to incur expenses to provide additional services for a Neighborhood. Any Neighborhood may request that additional services or an increased level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget shall include a reserve contribution establishing a fund for repair and replacement of items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood budgets shall become effective unless disapproved by a majority vote of the Owners of Units in Neighborhood for which the Neighborhood budget applies. There shall be no obligation to call a meeting for the purpose of considering the Neighborhood budget except on petition of Owners representing at least 10% of the votes in such Neighborhood, which petition must be presented to the Board within 30 days after notice of the Neighborhood Assessments. Notice of Neighborhood Assessment shall be provided as set forth in Section 8.1. The right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. In the event the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine as provided herein, the Neighborhood budget in effect for the immediately preceding year shall continue for the current year.

8.3. Budgeting for Reserves. The Board shall prepare, on an annual basis, reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments and Neighborhood Assessments reserve contributions in amounts sufficient to meet these projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for the Neighborhood.

8.4. Authority to Set Assessments and of Payment. The Association may levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular; (c) Special Assessments as described in Section 8.6; and (d) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment for each Unit shall be due and payable annually on January 1st of each year. Accounts that are not paid in full by March 1st of each year will be considered delinquent. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may assess a late charge and require unpaid installments of all outstanding assessments to be paid in full immediately. The Board may also

suspend the Owner's right to vote and their right to use any facility within the Common Areas (clubhouse, pool, playground) until all assessments are paid in full. Reference 7.4 (a) (ii), (iii) and (iv).

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessments may be levied against the entire membership, if for Common Expenses, or against the Units within the Neighborhood, if for Neighborhood Expenses. Such Special Assessments shall become effective unless (a) disapproved at a meeting of the Members representing at least a majority of the total votes allocated to Units which will be subject to such Special Assessment.

There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on petition of Members as provided for special meetings in the By Laws, which petition must be presented to the Board within 30 days after notice of the Special Assessment. Notice of Special Assessment shall be provided as set forth in Section 8.1. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6. Specific Assessments. The Board may levy Specific Assessments against particular Units for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize, which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, the Standards, or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within a Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, the Design Standards, and rules of the Association, provided the Board gives the Member from such Neighborhood prior written notice and an opportunity to be heard before levying any such assessment.

8.7. Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in this Declaration. All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not less than 10% per annum, subject to the limitations of Oklahoma law), reasonable late charges in such amount as is established by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.



8.8. Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest (subject to the limitations of Oklahoma law), late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure,

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Article VIII, including such acquirer, its successors and assigns.

8.9. Date of Commencement of Assessment Obligations. The obligation to pay assessments shall commence as to each unit on the first day of the month following: (a) the date the Unit is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base and Neighborhood Assessments against each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.11. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments: (a) all Common Area; (b) all property dedicated to and accepted by any governmental authority or public utility; and (c) all property owned and maintained by a Neighborhood Association (or by the members of a Neighborhood Association as tenants-in-common) exclusively for the common use and enjoyment of its members.

## COMMUNITY DEVELOPMENT

### Article IX EXPANSION OF THE COMMUNITY

9.1. Expansion by the Association. The Association may also subject additional property to the provisions of this Declaration by filing a Supplemental Declaration in the Official Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Voting Members of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. The Supplemental Declaration shall be signed by the President and Secretary of the Association and by the owner of the property.

9.2. Additional Covenants and Easements. BERRY CREEK COMMUNITY ASSOCIATION, INC. may subject any portion of the Properties to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. The consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.3. Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

### PROPERTY RIGHTS WITHIN THE COMMUNITY

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Association and others within or adjacent to the Community.*

### Article X EASEMENTS

10.1. Easements in Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules, regulations, or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to owners of Units and their guests, and rules limiting the number of occupants and guests who may use the Common Area;



(d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 7.4;

(e) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area

(f) The right of the Board to permit use of any Common Area facilities by non-Owners, their families, lessees, and guests upon payment of Board established use fees or such other basis as the Board determines;

(g) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;

(h) The right of the Board to change the use of any portion of the Common Area.

10.2. Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment of Owners' property, and any damage caused by the Association shall be repaired by the Association at its expense. The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, things or condition which violates the Governing Documents.

## RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

*Growth and success of BERRY CREEK as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the Community.*

### Article XI

## DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

11.1. Agreement to Avoid Litigation. The Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that specified claims, grievances, or disputes described in this Section ("Claims") shall be resolved using alternative dispute resolution procedures in lieu of filing suit in any court.

11.2. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 11.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.3:

(a) any suit by the Association to enforce the provisions of Article VIII,

(b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III and Article IV;

(c) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 11.3(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 11.3.

11.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing and provide a copy to the Board (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed remedy; and

(iv) that the Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the Claimant shall have 30 additional days to submit the Claim to such entity as is designated by the Association for mediating claims or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Stillwater, Oklahoma area.

(iii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, the Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to the Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.



(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

The Claimant shall thereafter be entitled to sue in any court of competent jurisdiction or to initiate proceedings before any appropriate administrative tribunal on the Claim. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

11.4. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 11.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 11.3. In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

## Article XII PROTECTION OF MORTGAGES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in BERRY CREEK.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or casualty loss which affects a material portion of the community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within 60 days; and

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

## CHANGES IN THE COMMUNITY

*Communities such as BERRY CREEK are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age change over time, and as the surrounding Community changes. BERRY CREEK and its governing documents must be able to adapt to these changes while protecting the things that make BERRY CREEK unique.*

### Article XIII

#### CHANGES IN OWNERSHIP OF UNITS

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

### Article XIV

#### CHANGES IN COMMON AREA

14.1. Condemnation. Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation only if approved in writing by 67% of the Members.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless within 60 days after such taking 67% of the Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

(b) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

14.2. No Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

14.3. Dedication of Common Area. The Association may dedicate or grant easements over portions of the Common Area to any local, state, or federal governmental entity.



Article XV

AMENDMENT OF DECLARATION

15.1. Amendment by Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 75% of the Voting Members. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

15.2. Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Official Records unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. A change of conditions or circumstances shall not operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 5<sup>th</sup> day of April, 2019.

BERRY CREEK COMMUNITY  
ASSOCIATION, INC.

By: Brandon Halcomb  
Brandon Halcomb, President

STATE OF OKLAHOMA     )  
  ) ss.  
COUNTY OF PAYNE     )

Before me, a notary public in and for said county and state, on this 5 day of April, 2019, personally appeared Brandon Halcomb, President of BERRY CREEK COMMUNITY ASSOCIATION, INC., a not for profit corporation, to me known to be the identical person who subscribed the name of the maker thereof to this instrument and acknowledged to me that the executed the same as his free and voluntary act and deed, and ad the free and voluntary act and deed of such company for the uses and purposes therein set forth.

Chelsi Clark  
Notary Public

Commission Expires: 10/28/21  
(SEAL)



## INDEX OF EXHIBITS

EXHIBIT A	Property Description of Berry Creek
EXHIBIT B	Use Restrictions and Rules
EXHIBIT C	Community-Wide Design Standards



EXHIBIT A

PROPERTY DESCRIPTION OF BERRY CREEK

A tract of land located in the Southwest Quarter of Section Twenty-One (21), Township Nineteen (19) North, Range Two (2) East of the Indian Meridian, Payne County, Oklahoma, more particularly described as follows, to-wit:

Beginning at the Southwest corner (SW/Cor) of said Southwest Quarter (SW/4); THENCE, North 90 degrees 00 minutes 00 seconds East along the South line of said Southwest Quarter (SW/4), a distance of 906.68 feet to the POINT OF BEGINNING; THENCE, North 00 degrees 00 minutes 00 seconds West, a distance of 1606.19 feet; THENCE, North 26 degrees 45 minutes 27 seconds East, a distance of 100.51 feet; THENCE, North 82 degrees 42 minutes 28 seconds East, a distance of 185.03 feet; THENCE, South 52 degrees 26 minutes 59 seconds East, a distance of 135.84 feet; THENCE, North 86 degrees 06 minutes 08 seconds East, a distance of 238.77 feet; THENCE, North 70 degrees 01 minutes 44 seconds East, a distance of 132.04 feet; THENCE, North 36 degrees 10 minutes 41 seconds West, a distance of 56.77 feet; THENCE, North 72 degrees 27 minutes 26 seconds East, a distance of 272.65 feet; THENCE, South 50 degrees 29 minutes 46 seconds East, a distance of 55.14 feet; THENCE, North 73 degrees 08 minutes 20 seconds East, a distance of 117.92 feet; THENCE, North 83 degrees 04 minutes 38 seconds East, a distance of 170.42 feet; THENCE, North 60 degrees 07 minutes 03 seconds East, a distance of 72.94 feet; THENCE, North 00 degrees 47 minutes 16 seconds East, a distance of 354.72 feet; THENCE, North 06 degrees 40 minutes 31 seconds East, a distance of 229.29 feet; THENCE, North 14 degrees 51 minutes 25 seconds East, a distance of 84.61 feet; THENCE North 89° 42 minutes 32 seconds East, a distance of 311.79 feet to a point on the East line of said Southwest Quarter (SW/4); THENCE, South 01 degrees 07 minutes 44 seconds East along the East line of said Southwest Quarter (SW/4), a distance of 2548.26 feet to the Southeast corner (SE/Cor) of said Southwest Quarter (SW/4); THENCE, South 90 degrees 00 minutes 00 seconds West along the South line of said Southwest Quarter (SW/4), a distance of 1728.30 feet to the POINT OF BEGINNING.

## EXHIBIT B

### USE RESTRICTIONS and RULES

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article III of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purpose.
2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:
  - (a) Parking of any vehicles (over 24 hours) on public or private streets or thoroughfares is prohibited. Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles for more than 72 hours in places other than enclosed garages is prohibited. Provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;
  - (b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets that in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or confined in a manner acceptable to the Board whenever outside the Unit. Pets shall be registered, licensed and inoculated as required by law;
  - (c) Any activity which emits foul or noxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
  - (d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
  - (e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, unsafe or untidy condition to exist outside of enclosed structures on the Unit;
  - (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
  - (g) Outside burning of trash, leaves, debris or other materials except during the normal course of constructing a dwelling on a Unit;
  - (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;



- (i) Use and discharge of firecrackers and other fireworks;
- (j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff;
- (k) Accumulation of rubbish, trash, or garbage except for regular garbage pick-ups, and then only in approved containers;
- (l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonable interfere with the use of any Unit without the Owner's consent;
- (m) Subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed in the Official Records;
- (n) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program;
- (o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for household purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;
- (q) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. Each unit is authorized to conduct a maximum of three garage sales during the calendar year. These sales would be the community-wide garage sales in the spring and fall and a moving sale, if applicable.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection.

- (r) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- (s) Conversion of any garage to finished space for use as an apartment or other integral part of the living area, is not permitted.
- (t) Operation of motorized vehicles on sidewalks maintained by the Association;
- (u) Construction, erection, or placement of anything is prohibited, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. Unless otherwise permitted in the Berry Creek Design Standards this shall include, without limitation, car ports, signs, swing sets and similar sports and play equipment; clotheslines; woodlots; above-ground swimming pools; antennas, walls, dog runs, and animal pens.

Basketball goals/hoops are not permitted to be installed on the residential structures. Portable basketball goals/hoops shall not be placed to block sidewalks or along the edge of streets. Portable basketball goals/hoops should be stored out of view from the street when not in use.

Swing sets and similar play equipment shall be of quality construction primarily of wood. No metal "kit-type" swing sets are allowed. Swing sets and other play equipment shall be installed out of view from the street if possible.

Before installing outdoor sports and play equipment and other outdoor items such as compost bins or rain barrels, homeowners are encouraged to consult with their immediate neighbors to ensure landscaping integrity and safety.

- (v) All garbage, recycling or compost containers must be stored in the garage or on the side or back of the unit, preferably not viewable from the street.
- (w) Use of go-carts, golf carts or similar motorized vehicles on sidewalks, common areas, and Units.
- (x) Automobiles (and other state tagged vehicles) must be parked on a paved area.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

- (a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;
- (b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair.



4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, Use Restrictions and Rules, and Berry Creek Design Standards.
5. Landscaping Standards and Compliance Policy:

Purpose: The following statement describes the policy of the Berry Creek Community Association, Inc. concerning landscaping and grounds maintenance.

Background: All members of the Association are required to maintain the landscaping on their lot in an acceptable fashion that is at a minimum, in keeping with the original intent of the neighborhood. Property maintenance shows courtesy and respect to neighbors and the surrounding community.

Policy: It is the policy of the Berry Creek Community Association, Inc. that members shall maintain the yard and landscaping on his or her property in the community to the following standards. Each individual yard should be designed to blend into the community as a whole. Homeowners who purchase a home in this community where the landscape is not up to standard are responsible for making necessary corrections immediately after taking possession of their new property.

Provisions of this policy apply to all landscaped areas, including backyards.

- a) Maintain lawns and planting beds in good health so as to present a neat and well-cared-for appearance year-round. All visible areas of each lot must be covered with turf, beds with plantings and mulch or attractive groundcover.
  - i. Mow lawn areas as needed - a properly cared for lawn will usually require mowing weekly during the growing season.
  - ii. Remove lawn clippings after mowing from all surrounding paved surfaces. Lawn clippings should not be allowed to accumulate in the street.
  - iii. Maintain a neat and clean lawn or bedding edge along sidewalks and other paved areas, as well as around planting beds within yards as needed during the growing season.
  - iv. Fertilize as needed and irrigate (following local watering restrictions) as needed; lawns should be green and dense throughout the growing season unless severe drought restrictions are in use.
  - v. Every attempt must be made to keep the lawns as weed free as possible.
  - vi. All visibly exposed beds must be mulched in earth tones.
  - vii. Keep planting beds free of weeds, unwanted growth, dead plant material and debris.
  - viii. Do not allow trees, shrubs and other plants to obstruct the sidewalk or road.
  - ix. Trees and shrubbery should not block the visible sight lines of street intersections or driveways.
  - x. Plants should be trimmed to provide full access to sidewalks for our pedestrians, and should not unreasonably encroach on private properties, while remaining natural and shapely.
  - xi. Promptly remove and properly dispose of all dead/dying or damaged plant

- material.
- xii. Keep sidewalks and driveways clear of fallen leaves and other debris.
- b) Any vegetable gardens must be in the back yard.
- c) Hardscaping:
- i. No more than twenty-five percent (25%) of a property should be covered with hardscaping material. The lawn should consist primarily of turf.
  - ii. If decomposed granite or other landscape rock is used, it must be of an "earth tone" color and not, green, blue, or other bright colors. All rock areas are not allowed to have weed growth. Coverage must be solid.
  - iii. Boulders are accepted and should look like those indigenous to the natural surrounding area of the development.
- d) Landscape lights are permitted and must be kept in repair. Holiday lights on the front of homes should be removed within two weeks after the holiday.
- e) Driveways and streets in front of homes must be maintained free of residue such as oil and chemical spots.
- f) Fountains, statuary, outdoor furniture, and outdoor art should blend with the landscaping.



## EXHIBIT C

### BERRY CREEK DESIGN STANDARDS

*Berry Creek is a planned community. The purpose of the Berry Creek Design Standards is to ensure harmony throughout the development, maintain a community-wide pattern, enhance all owners' quality of life and collective interest and the aesthetics and environment within Berry Creek. The principles are created to protect each homeowner's investment. Design criteria have been developed to provide consistency and natural beauty while prohibiting features considered offensive to the majority of the homeowners. Harmony, pride of ownership and sustained property value are the keys to the type of community desired for Berry Creek homeowners.*

- a) Square footage minimum-2,500; Two story homes first floor square footage minimum-1,600.
- b) Roof pitch minimum—8/12
- c) All homes shall be a minimum of fifty (50) percent masonry unless written variances are specifically approved by the Board.
- d) Exterior color scheme shall be harmonious with the neighborhood. Preferred colors are earth tones or shades of white. Bold/bright colors are discouraged. All colors shall require Board approval.
- e) Roof/shingle style shall be a minimum of, or similar to, Heritage II shingle.
- f) Roof color shall be earth tones and shall generally exclude bold/bright colors (ex. blue, red, green, etc.) The Board must approve in writing any roof material other than composition shingle.
- g) No mansard, flat or gambrel roofs will be considered. No geodesic domes, underground or bermed houses, ultra-contemporary or extreme style (ex, Spanish oriental, Victorian, gingerbread, etc.). House designs and styles shall be compatible/harmonious design in order to achieve a mutually beneficial neighborhood for all homeowners.
- h) Fencing must be specifically approved by the Board. No traditional chain link fences or single sided wood privacy fences shall be allowed. Iron fencing (example: Berry Creek entrance area) and wood fencing finished on both sides and capped may be allowed. Wood fencing is only allowed in specific areas as designated by the Board. All support posts shall be made of steel or other approved composite materials.
- i) No detached-out buildings will be permitted.
- j) All drives will be hard surface.
- k) Yard ornaments (e.g., large or numerous statuarys, distasteful decoration or signage, etc.) will be subject to review by the Board.
- l) The Board shall have thirty (30) days to complete review of submitted documents. First review, no charge, additional reviews, \$50.00 per review.
- m) Construction of all houses shall be completed within twelve months from date of groundbreaking.

- n) All homes within Berry Creek shall be required to use the mailbox designated by the Board and it shall be placed by Board standards.
- o) Set back requirements for Block 1, Lots 1-7 shall be thirty (30) feet.
- p) Solar collectors shall only be permitted to be constructed on the rear or side of the dwelling unit, level with the roof and not readily visible from the front street elevation and must have approval of the Board/DRC prior to installation.
- q) Outside storm shelters must be installed so as not to be visible from the street. Alternatively, they must be concealed and hidden with appropriate landscaping.