



**SUPPLEMENTAL COVENANTS, CONDITIONS, AND RESTRICTIONS,
FOR BERRY CREEK, THE GARDENS, A SUBDIVISION OF THE
BERRY CREEK RESIDENTIAL SUBDIVISION OF STILLWATER,
PAYNE COUNTY, OKLAHOMA**

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Glenna Craig, Payne County Clerk
Payne County, State of Oklahoma

RECITALS

1. BERRY CREEK, THE GARDENS, also referred to as BERRY CREEK GARDEN HOMES NEIGHBORHOOD, is a gated subdivision of BERRY CREEK, a subdivision of Stillwater, Payne County, Oklahoma, according to the recorded plat thereof.
2. BERRY CREEK, THE GARDENS, is subject to the overall Declaration of Covenants, Conditions and Restrictions for the BERRY CREEK subdivision (also referred to as Berry Creek Community Association, Inc.).
3. BERRY CREEK, THE GARDENS, contains a private road system and gated entryway which must be maintained by the property owners within the BERRY CREEK GARDEN HOMES NEIGHBORHOOD.
4. The undersigned, being 75%, or more, of the property owners of BERRY CREEK, THE GARDENS, declare that the property described as:

A tract of land in the Southwest Quarter (SW/4) of Section Twenty-one (21), Township Nineteen (19) North, Range Two (2) East, of the Indian Meridian, City of Stillwater, Payne County, Oklahoma being more particularly described as follows;

COMMENCING 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 2267.98 feet to the POINT OF BEGINNING;

THENCE, continuing North 90 degrees 00 minutes 00 seconds East, along the South line of said Southwest Quarter (SW/4), a distance of 367.00 feet to the Southeast corner (SE/cor) of said Southwest Quarter (SW/4); THENCE, North 01 degrees 09 minutes 22 seconds West, along the East line of said Southwest Quarter (SW/4), a distance of 1603.33 feet; THENCE, South 44 degrees 44 minutes 42 seconds West, a distance of 233.29 feet; THENCE, South 90 degrees 00 minutes 00 seconds West, parallel with the South line of said Southwest Quarter (SW/4), a distance of 320.89 feet; THENCE, North 18 degrees 20 minutes 09 seconds West, a distance of 230.20 feet; THENCE, South 83 degrees 04 minutes 38 seconds West, a distance of 36.25 feet; THENCE, North 07 degrees 08 minutes 52 seconds West, a distance of

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175.00 feet; THENCE, South 73 degrees 08 minutes 20 seconds West, a distance of 117.92 feet; THENCE, North 50 degrees 29 minutes 46 seconds West, a distance of 55.14 feet; THENCE, South 72 degrees 27 minutes 26 seconds West, a distance of 272.65 feet; THENCE, South 36 degrees 10 minutes 41 seconds East, a distance of 56.77 feet; THENCE, South 70 degrees 01 minutes 44 seconds West, a distance of 100.00 feet to the Northeast corner (NE/cor) of Lot Fourteen (14) Block Two (2) BERRY CREEK, FIRST SECTION according to the recorded plat thereof, THENCE, South 32 degrees 01 minutes 21 seconds East, along the East boundary of said Lot Fourteen (14) Block Two (2) BERRY CREEK, FIRST SECTION, a distance of 179.12 feet; THENCE, along the boundary of said BERRY CREEK, FIRST SECTION, and around a curve to the left with a delta of 03 degrees 32 minutes 13 seconds, a radius of 195.00 feet, a tangent of 6.02 feet, an arc length of 12.04 feet, a chord bearing of North 55 degrees 35 minutes 25 seconds East, and chord distance of 12.04 feet; THENCE, North 53 degrees 49 minutes 19 seconds East, along the boundary of said BERRY CREEK, FIRST SECTION, a distance of 58.73 feet; THENCE South 36 degrees 10 minutes 41 seconds East, along the boundary of said BERRY CREEK, FIRST SECTION, a distance of 50.00 feet to a point on the North boundary of Lot One (1) Block Four (4) BERRY CREEK, FIRST SECTION; THENCE, 53 degrees 49 minutes 19 seconds East, along the North boundary of said LOT One (1) Block (4), BERRY CREEK, FIRST SECTION, a distance of 68.77 feet to the Northeast corner (NE/cor) of said Lot One (1) Block Four (4) BERRY CREEK, FIRST SECTION; THENCE, South 19 degrees 58 minutes 16 seconds East, along the boundary of said BERRY CREEK, FIRST SECTION, a distance of 229.65 feet to a lot corner of Lot (3) Block Four (4) BERRY CREEK, FIRST SECTION; THENCE, along the boundary of said BERRY CREEK, FIRST SECTION, and around a curve to the left with a delta of 38 degrees 00 minutes 18 seconds, a radius of 240.00 feet, a tangent of 82.65 feet, an arc length of 159.19 feet, a chord bearing of South 38 degrees 58 minutes 24 seconds East, and a chord distance of 156.29 feet to the East corner (E/cor) of Lot Five (5) Block Four (4), BERRY CREEK, FIRST SECTION; THENCE, South 34 degrees 41 minutes 30 seconds West, along the boundary of said BERRY CREEK, FIRST SECTION, a distance of 300,26 feet to a Lot corner of Lot one (1) Block Five (5), BERRY CREEK FIRST SECTION; THENCE, south 13 degrees 16 minutes 34 seconds West, along the boundary of said BERRY CREEK, FIRST SECTION, a distance of 155.23 feet to the Southeast corner (SE/cor) of Lot One (1) Block Five (5) BERRY CREEK, FIRST SECTION; THENCE, around a curve to the right with a delta of 24 degrees 16 minutes 03 seconds, a radius of 225.00 feet, a tangent of

48.37 feet, an arc length of 95.30 feet, a chord bearing of South 70 degrees 54 minutes 45 seconds East, and a chord distance of 94.59 feet; THENCE, North 31 degrees 13 minutes 17 seconds East, a distance of 125.07 feet; THENCE, South 57 degrees 39 minutes 55 seconds East, a distance of 101.65 feet; THENCE, North 90 degrees 00 minutes 00 seconds East, parallel with the South line of said Southwest Quarter (SW/4), a distance of 481.25 feet; THENCE, around a curve to the right with a delta of 13 degrees 30 minutes 33 seconds, a radius of 475.00 feet, a tangent of 56.26 feet, an arc length of 111.99 feet, a chord bearing of South 16 degrees 09 minutes 50 seconds West, and a chord distance of 111.74 feet; THENCE, South 22 degrees 55 minutes 06 seconds West, a distance of 68.20 feet; THENCE, around a curve to the right with a delta of 85 degrees 25 minutes 26 seconds, a radius of 75.00 feet, a tangent of 69.24 feet, arc length of 111.82 feet, a chord bearing of South 43 degrees 50 minutes 27 seconds East, a chord distance of 101.75 feet; THENCE, South 01 degrees 07 minutes 44 seconds East, a distance of 421.07 feet; THENCE, around a curve to the right with a delta of 91 degrees 07 minutes 44 seconds, a radius of 25.00 feet, a tangent of 25.50 feet, an arc length of 39.76 feet, a chord bearing of South 44 degrees 26 minutes 08 seconds West, a chord distance of 35.70 feet; THENCE, South 90 degrees 00 minutes 00 seconds West, parallel with the South line of said Southwest Quarter (SW/4), a distance of 113.06 feet; THENCE, around a curve to the left with a delta of 14 degrees 50 minutes 06 seconds, a radius of 161.50 feet, a tangent of 21.03 feet, an arc length of 41.82 feet, a chord bearing of South 82 degrees 34 minutes 57 seconds West, a chord distance of 41.70 feet; THENCE, around a curve to the right with a delta of 14 degrees 50 minutes 06 seconds, a radius of 138.50 feet, a tangent of 18.03 feet, an arc length of 35.86 feet, a chord bearing of South 82 degrees 34 minutes 57 seconds West, a chord distance of 35.76 feet; THENCE, South 00 degrees 00 minutes 00 seconds East, a distance of 50.00 feet; THENCE, North 90 degrees 00 minutes 00 seconds East, parallel with the South line of said Southwest Quarter (SW/4), a distance of 21.36 feet THENCE, South 00 degrees 00 minutes 00 seconds East, a distance of 90.00 feet to a point on the South line of said Southwest Quarter (SW/4) and said point also being the POINT OF BEGINNING.

shall be held, sold and conveyed subject to the following Supplemental Covenants, Conditions and Restrictions which are for the purpose of protecting the value and desirability of the described property and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any party thereof, their heirs, successors and assigns, and which shall inure to the benefit of each Owner thereof.

COVENANTS, CONDITIONS AND RESTRICTIONS

5. A dwelling unit at BERRY CREEK GARDEN HOMES NEIGHBORHOOD must be occupied by an OWNER, which includes the Settlers/Trustees of a revocable living trust. Dwelling units not currently owner occupied shall not be subject to this requirement until title is transferred to subsequent Owners by deed, gift, inheritance, foreclosure Sheriff's Sale or tax sale, at which time the lot shall be subject to this Declaration.

6. Dwelling units in the BERRY CREEK GARDEN HOMES NEIGHBORHOOD shall not be rented or leased. This rental restriction includes renting out rooms when the dwelling is Owner Occupied. Renting out rooms is NOT allowed in the BERRY CREEK GARDEN HOMES NEIGHBORHOOD. However, with approval of the Board of Directors of the BERRY CREEK GARDEN HOMES NEIGHBORHOOD, the following two exceptions may be allowed: (1) rental or leasing for up to 12 months for a dwelling unit placed on the market for sale; and, (2) rental or leasing for up to 12 months for a dwelling unit where Owners have an employment-related absence (e.g., sabbaticals and military deployment). Dwelling units currently being leased or rented shall not be subject to this requirement until title is transferred to subsequent Owners by deed, gift, inheritance, foreclosure Sheriff's Sale or tax sale, at which time the lot shall be subject to this Declaration.

7. Parking at BERRY CREEK GARDEN HOMES NEIGHBORHOOD is limited because of smaller lot sizes and street design, therefore, Owner's personal cars must be parked in their garage or driveway. Visitors must be instructed to park in the remaining driveway space or on the street directionally (same direction as traffic flow). No street parking will be allowed between the hours of 12:30 A.M. and 7:00 A.M. without special permission from the Board of Directors of the BERRY CREEK GARDEN HOMES NEIGHBORHOOD. There will be no blocking of any portion of neighbor's driveways or parking on the wrong side of the street. Any vehicle violating any of these restrictions may be removed (towed) at the owners expense if any of the following three conditions is met: (1) a written warning is placed on the vehicle and the vehicle is not in compliance within two hours; (2) a verbal warning is given to the vehicle owner or operator and the vehicle is not in compliance within one hour, or, (3) the vehicle is a repeat offender. Only designated members of the Board of Directors of the BERRY CREEK GARDEN HOMES NEIGHBORHOOD can issue verbal and written warnings and call for a vehicle to be towed.

8. Construction of new dwellings in the BERRY CREEK GARDEN HOMES NEIGHBORHOOD shall abide by the requirements of the BERRY CREEK COMMUNITY ASSOCIATION, INC. with the following exceptions: 1. Stone, brick, roofing, roof line, and outside colors of the Garden Homes shall be of like color and appearance as other existing Garden Homes. 2. All Garden Homes must have stone AND brick exterior. 3. Because of the smaller lots, square footage of each Garden Home can be less than 2,500 square feet with permission of the BERRY CREEK COMMUNITY ASSOCIATION BOARD OF DIRECTORS.

9. Violation of this Section will result in remedies arising from such Owner's violations of the provisions of this Article, including, without limitation, filing suit to remove a tenant when the tenancy violates the rental restrictions in this Article. In the event of a lease of a dwelling unit where the occupancy and other requirements of this Article are not met, Declarant's Association shall be entitled to file for and obtain an injunction against the Owner of the dwelling unit and the lessee and/or other occupants in the dwelling unit, removing the unauthorized lessee and/or other unauthorized occupants. Declarant's Association shall also be entitled to evict the lessee and other occupants in the residence, as agent for the Owner. If Declarant's Association is the prevailing party, costs and attorney's fees incurred by Declarant's Association in connection with the exercise of its remedies under this Section shall be the responsibility of the Owner of the dwelling unit.

BERRY CREEK GARDEN HOMES NEIGHBORHOOD HOMEOWNERS' ASSOCIATION

All of the lots in this subdivision, including ingress and egress applicable thereto, shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the described property, and which shall run with, the real property and which shall be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns and shall insure to the benefit of each Owner thereof.

Part I - Definitions

Section 1. "Association" means BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION, its successors and assigns.

Section 2. "Board of Directors" means the Board of Directors of the Association as selected pursuant to the provisions of the Association's Bylaws.

Section 3. "Owner" means the record Owner and member in the "Association", whether one or more persons or entities, of a fee simple title to any lot shown on the recorded subdivision plat of BERRY CREEK GARDEN HOMES NEIGHBORHOOD, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Common Area" means the road system and entry gate owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Lawn Care" means providing lawn care services for each lot in the "Association" where lawn care services are defined as such services as weed control, fertilizing, edging, and mowing.

Part II - Property Rights

Every Owner shall have a right to receive "Lawn Care" and shall have a right and easement of enjoyment and to the "Common Areas" that shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a) The right of the Association to charge reasonable fees for "Yard Care," the maintenance, upkeep, and utility fees associated with "Common Areas", and the right to place liens when Owner(s) of any lot (s) fails, refuses or neglects to pay said fees;
- b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment or fine against Owner's lot remains unpaid.

Part III - Membership and Voting Rights

Section 1. Every Owner of a lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot that is subject to assessment.

Section 2. Members shall be all Owners. All Members will be entitled to vote on BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION matters on the basis of one (1) vote for Lot owned. When more than one person holds an interest in

any Lot, all such persons shall be Members, but there shall be only one (1) vote per Lot.

Part IV - Covenant for Maintenance Assessments

Section 1. The Declarant, for each lot owned, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to Owner's successors in title unless expressly assumed by them. The lien imposed by this paragraph shall continue as a charge on the lot in the event of a sale or transfer of the lot.

Section 2. The assessments levied by the Association shall be used for the maintenance of the private road, entrance gate, lawn care for each lot, upkeep, improvements, and for payment of utility costs associated with the BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION.

Section 3. The annual assessment shall be \$ 750.00 per lot.

- a) From and after January 1, 2020, the annual assessment may be increased each year not more than ten percent (10%) above the assessment from the previous year without a vote of the membership. Changes in the amount of future annual dues shall be based upon an estimate of the Association's cost for administration, maintenance, and improvement of the "Common Areas" and provision of "Lawn Care."
- b) From and after January 1, 2020, the annual assessment may be increased above ten percent (10%) by a majority vote of the members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.
- c) The Board of Directors may fix the annual assessment at an amount not in excess of the percentages as set forth hereinabove.

Section 4. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the "Common Areas", including the fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes of the

membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4, of this Part IV, herein shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxy entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Both annual and special assessments must be fixed at the uniform rate for all lots and shall be collected on an annual basis. Annual and special assessments shall constitute a lien on the lot if not paid within thirty (30) days of written notice of the assessment to the lot Owner.

Section 7. The annual assessments provided for herein shall commence as to all lots on the first day of January, 2020. The Board of Directors shall fix the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Any assessment not paid within thirty (30) days after the due date shall bear interest at the maximum rate allowed by law per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein. In addition to the amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges, and other expenditures ("Additional Charges") as the Association may incur or levy in the process of collection from each member monies due and delinquent. All Additional Charges shall be included in any judgments in any action brought to enforce collection of delinquent dues or assessments. Additional Charges may include, but are not limited to, the following: reasonable attorney's fees; late charges in the amount to be fixed by the Association in an amount not to exceed the greater of ten percent of the delinquent assessment or twenty dollars (\$20.00); costs of suit;

filing fees; and interest at the maximum rate allowed by law, commencing thirty days after the assessment becomes due.

Section 9. Sale or transfer of any lot shall not affect the assessment lien. The sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall not extinguish the lien of such assessment as to payments that become due prior to such sale or transfer, unless otherwise provided by order of the District Court. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.

Part V - General Provisions

Section 1. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the Provision of Article II of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Neither the BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION, nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION if the action or failure to act was made in good faith. The BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaw.

Part VI: Effective Date of Supplemental Covenants, Conditions, and Restrictions

The Supplemental Covenants, Conditions and Restrictions shall become effective upon recordation in the official records.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this

23rd day of March 2020.

BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION

By: *Don R. Hansen*
Don R. Hansen, President

STATE OF OKLAHOMA)
) ss
COUNTY OF PAYNE)

Before me, a notary public in and of for said county and state, on this 23rd day of March, 2020 appeared Don R. Hansen, President of the *BERRY CREEK GARDEN HOMES NEIGHBORHOOD ASSOCIATION*, a gated subdivision of the *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 the free and voluntary act and deed of such company for the uses and purposes therein set forth.

Cindy L. Weatherly
Notary Public

Commission Expires 02-11-2021

(SEAL)

