

**Amendment to Declaration of Covenants, Conditions and Restrictions  
For High Garden Phase I to the City of Edmond, Oklahoma County, Oklahoma**

This Declaration is made this 2<sup>nd</sup> day of May, 2019, by High Garden Development, LLC.

**RECITALS**

WHEREAS, High Garden Development, LLC., hereafter referred to as "Declarant", are the owners of certain land and improvements (HIGH GARDEN PHASE I) in Oklahoma County, Oklahoma, which property is more fully described on the attached "Exhibit A", incorporated herein and made a part hereof; and

WHEREAS, the Subject Property has been platted into Lots for separate ownership, subject to these Declarations, which plat has been filed for record on the 16<sup>th</sup> day of May, 2018, in the County Clerk's office of Oklahoma County at Plat Book 76, page 83: and

WHEREAS, Declarant desires to submit the Subject Property and the improvements to be constructed thereon to Oklahoma's Real Estate Development Act (Title 60 O.S. 1971, ' ' 851 et seq, as amended); and

Declarant wishes to amend the Covenants and Restrictions for HIGH GARDEN PHASE I which were recorded on May 31, 2018 in Book RE 13749 on pages 1473-1487. As listed in Section 3 of the General Provisions, the Declarant has the right to amend the covenants since the Declarant owns more than 80% of the lots. Declarant wishes to amend as follows:

- A. Section 4 of the original covenants lists the minimum square feet to be 2,500, this amendment will change the minimum to 2,000 square feet.
- B. Section 5(c) of the original covenants lists cedar wood as the only material for fencing, this amendment shall allow regular stockade fencing.
- C. Section 5(f) of the original covenants lists decorative wrought iron as the only material for mailboxes, this amendments shall allow brick as well.
- D. Section 5(h) of the original covenants lists masonry products for all chimneys, this amendment shall allow for siding material.

The adoption of the Declarations described hereinabove shall specifically include and apply to membership in the HIGH GARDEN HOA, INC., an Oklahoma nonprofit corporation, the mandatory homeowners association created to govern the benefits and duties of ownership of a Lot in High Garden Phase I.

- Blk 1-Lots 1-2-3-4
- Blk 2-Lots 5-6-7-8
- Blk 3-Lots 1-2-3-4-5-6-7-8-9-12-13-14-15-16-17-18-19-20-21-22
- Blk 4-Lots 1-2
- Blk 5-Lots 1-2-3-4-5-6-8-10-11-12-13
- Blk 6-Lots 2-3-4-5-6-7-8-9-10-11-12-13-14-15-16

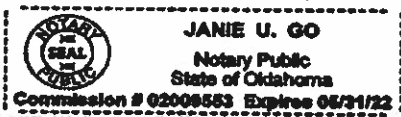
DECLARANT

High Garden Development, LLC.

By: Michael Love  
Michael Love

STATE OF OKLAHOMA )  
  ) ss.  
COUNTY OF OKLAHOMA )

This instrument was acknowledged before me on May 2<sup>nd</sup>, 2019, by Michael Love as Manager of High Garden Development, LLC.



Janie U. Go  
Notary Public



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF HIGH GARDEN PHASE I TO THE CITY OF EDMOND, OKLAHOMA COUNTY, OKLAHOMA, A SUBDIVISION OF A PART OF THE NW/4 OF SECTION 12, TOWNSHIP 14 NORTH, RANGE 2 WEST OF THE I.M., OKLAHOMA COUNTY, OKLAHOMA**

THIS DECLARATION, is made on the date hereinafter set forth by HIGH GARDEN DEVELOPMENT, LLC., an Oklahoma limited liability company, hereinafter referred to jointly as "Declarant", "Owner", and "Developer".

**WITNESSETH:**

WHEREAS, Declarant and Owner are all the owners of certain real property in Oklahoma County, State of Oklahoma, which is more particularly described as follows:

All Lots and Blocks in HIGH GARDEN Phase I Oklahoma County, Oklahoma, according to the recorded plat.

**NOW THEREFORE**, Declarant and Owner hereby declare that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding upon all parties having any right, title or interest in the described properties or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**LAND USE RESTRICTIONS**

Section 1. Use. The Lots in HIGH GARDEN Phase I shall be used for private residence purposes only. No store or business, no gas or automobile service station, no flat, duplex, or apartment house, though intended for residence purposes, and no building of any kind whatsoever shall be erected or maintained thereon, except private dwelling houses, and such dwelling house being designated for occupancy by a single family in its entirety.

Section 2. Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood.

Section 3. Architecture. Complete elevation for any structure proposed to be erected must first be submitted to the Developer and written approval thereof obtained from the Developer prior to the commencement or any construction upon each and all of the Lots.

Section 4. Size and Height. No building site shall have less than 8,000 square feet. No residence shall have less than 2,500 square feet. All residences shall be limited to two (2) stories and shall have a minimum of 1,800 square feet on the first floor.

Section 5. Materials.

- (a) Each residence must have a minimum of 75% masonry product (brick, stone, stucco) constructed around the structure. Written approval is required from the developer if the builder wants to deviate from the minimum amount of masonry.
- (b) Roofs are to be of wood shingles, wood shakes, clay, and tile or asphalt composition roofing which is the color of weathered wood, black, or grey and metal accents are acceptable. Residence roofs shall have a minimum pitch of 9/12.
- (c) All fences must be cedar wood and may not exceed six (6) feet in height. All fences must commence at a point not less than five (5) feet behind the front corner(s) of the interior dwelling portion of the house (not garage area), and extend towards the back of the lot. The intent of this Section 5(c) is that no portion of the front yard shall be fenced. On any corner lot the fence on the side of the house must be a minimum of fifteen (15) feet away from the

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curb. All fences mentioned in this Section 5(c) shall be constructed on or inside platted property lines. Any fences other than above will have to be approved by developer. Fences may not be painted with anything other than a clear sealant or stain.

- (d) Foundation construction shall be footing and stem or pier on grade.
- (e) Lawn sodding must be complete for any Lot on or before occupancy, weather and growing season permitting. Each completed house must have at least 2 trees measuring 2 inches in diameter each, planted in the front yard. A landscape plan must be provided.
- (f) All mailboxes shall be a decorative, wrought iron mailbox of a design approved by the developer.
- (g) There shall be no temporary basketball backboards left outside overnight. If a temporary backboard is used, it must be stored out of vision from the street overnight.
- (h) All exposed chimneys must be of masonry product to match the house. All retaining walls must be constructed of approved products by the developer. If there is a discussion on who builds the retaining wall, it is the house that makes a cut on the lot or who is downstream from the flow.

Section 6. Plans and Specifications. The complete set of plans, materials, size, and use of structure, plot plan, and specifications shall be submitted for written approval in advance of construction.

Section 7. Fencing. All fencing of the following types other than those referred in Section 5(c) above must be approved in writing in advance of its installation:

- (a) Association fence;
- (b) Public fence;
- (c) Any other fence which could extend beyond the front of any building structure or be taller than the height restriction described in Section 5(b);
- (d) Adjoining fences.

Section 8. Construction Period. Upon commencement of the excavation for construction of any Lot or Lots in this plat, the work must be continuous, weather permitting, until the house, etc. is complete. No delay of construction within a period of twelve (12) months will be permitted, unless further extension for the completion of said house, etc. is given in writing. If no such consent is given, the Developer or its designee may, but shall not be obligated to, complete such construction. No temporary out building, temporary home or other temporary structures shall be placed or erected upon any lot unless approved in writing.

Section 9. Set-Back of Building Structures from Streets. No building structure or part thereof, except as hereinafter provided, shall be erected or maintained on any of the lots nearer to the front street or the side street than the front building limit line or the side building limit line of the aforementioned lots, as shown on said plat.

Section 10. Free Space (Side Set-Back). No part of any building structure on the lots shall be erected nearer than five (5) feet to the side property line except that cornices, spouting, chimneys and ornamental projections may extend two (2) feet nearer said side property line. Any other deviations of side set-backs must have prior written approval.

Section 11. Parking, Storage and Easements.

- (a) No parking and/or storage of trailers, boats and/or other vehicles which are not normally used as everyday transportation will be allowed on streets or lots except where adequate screening has been previously provided which the Developer has given his written approval thereto.

- (b) No commercial vehicles (excepting private passenger type vehicles tagged as commercial, i.e. a Suburban or other Sport Utility vehicle, but not trucks), construction equipment, or like equipment or mobile or stationary trailers of any kind shall be permitted on or near any lot of the subdivision unless kept in a garage completely enclosed. Vehicles used during the home construction phase of this subdivision may be accepted.
- (c) No overnight parking of any trailer, boat, camper or recreational vehicle (RV) is permitted.
- (d) Playground equipment may be kept on the premises provided it is in an area concealed from the street or streets.
- (e) No temporary or permanent parking of automobiles or other vehicles is permitted in the yard of any lot. Nor may any unoperable automobile or other unoperable vehicle be repaired, parked, or stored on any lot, driveway or street for more than five consecutive calendar days, unless done in an area totally concealed from any street or streets.
- (f) After the completion of the principle residence, no building material of any kind or character or construction tools or equipment may be stored on any lot unless totally concealed from any street.
- (g) No trash, ashes, vegetation, or other refuse may be thrown or dumped on any lot or vacant lot in the addition. Each owner of a vacant lot is required to keep said lot in presentable condition or the Homeowners Association, after issuance of proper notice, may mow said lot, trim trees, remove trash refuse and levy a lien on said lot for the cost involved.
- (h) All clotheslines, garbage cans, woodpiles, storage piles, trailers, boats and other water vehicles of all types, inoperative vehicles, and equipment, except air conditioning units shall be walled in. No window air conditioning unit may be visible from any street or lot.
- (i) The Developer reserves the right to locate, construct, erect and maintain, or cause to be located, constructed, erected and maintained, in, on, and under the areas indicated on the plat as easements, sewer and other pipelines, conduits, poles and wires, or any other method of conduction for performing any quasi-public utility or function above or beneath the surface of the ground, with the right of access at any time to the same for the purpose of repair and maintenance.
- (j) No leaching cesspool or septic tank shall be constructed and/or used on any lot in this addition.
- (k) No owner of any lot or lots in this addition shall demand or require the furnishing of electric service through or from overhead wire facilities so long as electric service is available from an underground distribution system and the owner of each lot shall provide the required facilities to take and receive electric service to any improvements erected thereon by means of underground service conductors, installed, owned and maintained in accordance with plans and specifications furnished by the electric service supplier, leading from the source of supply in the utility reserve to such improvements.

**Section 12. Signs, Billboards and Miscellaneous Structures.**

- (a) No signs or billboards will be permitted upon this property except those advertising the sale or rental of such property, provided that such signs do not exceed six (6) square feet in area, or those for which written approval has been obtained in advance.
- (b) No miscellaneous structures are allowed on the property without prior written approval. These miscellaneous structures include, but are not limited to, outbuildings (building structures not attached or forming a part of the principal living structure), storage tanks, tool sheds, kennels, pool houses, pergolas, greenhouses, wind powered generators and the concomitant towers, satellite receivers, radio or television towers, antennae or aerials or any

other temporary structure, etc. This is not intended to prohibit outbuildings, etc., but only to control the use thereof for the protection of all owners. There is no exception for television antennas that do not exceed six (6) feet in height, until such time as cable television is available. After construction has been completed on the residence, the herein described structures are not permitted unless totally concealed from the street.

- (c) No solar panels or other solar energy devices shall be allowed to extend more than two (2) feet in height from the top of the house. This provision is not intended to prohibit solar panels or solar energy devices but merely to limit the design thereof.

**Section 13. General.**

- (a) No tank for storage of oil or other fluid may be maintained above the ground on any of these lots.
- (b) No detached structure or building for purely ornamental use is permitted without prior written consent.
- (c) The keeping or housing of poultry, cattle, horses, or other livestock, of any kind or character is prohibited on any lot.
- (d) No garage or outbuilding on any lot shall be used as a residence or living quarters.
- (e) No house or outbuilding shall be moved to any lot from any other locality, without prior written consent. No building or other structure shall be constructed or maintained upon any lot which would in any way impede natural drainage without prior written consent. No grading, scraping, excavation or other rearranging or puncturing of the surface of any lot shall be commenced which will or may tend to interfere with, encroach upon, or alter, disturb or damage any surface or subsurface utility line, wire or easement, or which will or may tend to disturb the minimum or maximum subsurface depth requirement of any utility line, pipe, wire or easement.
- (f) No drilling or puncturing of the surface for oil, gas or other minerals or hydrocarbons or water or combination thereof shall be permitted without prior written consent.
- (g) All small drainage channels, emergency overflow and other swales which are important to abutting properties but are not a part of the drainage system maintained by public authority or utility company, shall be the property owner's responsibility; and it shall be the responsibility of the owner to (a) keep the easements, channels and swales free of any structure, planting or other material which may change the direction of flow or obstruct or retard the flow of water in the channels or swales, whether they be in easements or contained on the individual property owner's lot, and (b) the property owner shall provide continuous maintenance of the improvements in the easements, or of the channels or swales; except for the improvements for which a public authority, utility company or property owner's maintenance association is responsible.
- (h) No Lot shall be physically split or subdivided into two or more parcels by any means. For the purpose of the preceding sentence, "any means" includes but is not limited to deeds, mortgages or liens, mortgage or lien foreclosures, partition suits or any other means whatsoever.
- (i) All lot owners are required to become members of the HIGH GARDEN Homeowners Association, and abide by its' rules, regulations, and by-laws.
- (j) The Developer shall be the sole grantor of all written approvals or consents required in these covenants, until such time as Developer assigns in writing to the Homeowner's Association said right to issue written approvals or consent.

**Section 14.** Right to Enforce. The restrictions herein set forth shall run with the land and bind the present owners, its successors and assigns, and all parties claiming by, through, or under them, shall be taken to hold, agree and covenant with the owners of said Lots, their successors and assigns, and with each of them to conform to and observe said restrictions as to the use of said lots and construction of improvements thereon but no restriction herein set forth shall be personally binding on any corporation, person or persons, except in respect to breaches committed during his, its or their ownership of title to said land, and the owner or owners of any of the above shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth in addition to the ordinary legal action for damages; and failure of companies or owner or owners of any other lot or lots shown in this plat to enforce any of the restrictions herein set forth at the time of its violation shall in no event be deemed a waiver of the right to do so thereafter. Such premises shall be subject to any and all right and privileges which the City of Edmond or the County of Oklahoma may have acquired through dedication or the filing or recording of maps or plats of such premises, as authorized by law, and provided further, that no covenants, conditions, reservations, or restrictions, or acts performed shall be in conflict with any state, county or city zoning, ordinance or law.

**NOW THEREFORE,** Declarant and Owner hereby create the HIGH GARDEN HOMEOWNERS ASSOCIATION, and declare that all of the property described below shall be subject to the following Specific Provisions, Membership and Voting Rights, Covenant for Assessments, and General Provisions of said Association.

## **HIGH GARDEN HOMEOWNERS ASSOCIATION**

### **SPECIFIC PROVISIONS**

**Section 1.** THE ASSOCIATION. The Association is a non-profit Oklahoma corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor the By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association, by reference, shall extend to and encompass by membership, all land contained within HIGH GARDEN Phase I, Phase II, Phase III & Phase IV in Oklahoma County, Oklahoma.

**Section 2.** BOARD OF DIRECTORS. The Association shall have a Board of Directors, as provided in this Declaration. Any action taken pursuant to the rights, powers, and duties granted to the Association by the Declaration, Articles, By-Laws, HIGH GARDEN Rules and Architectural Rules may be taken by the Association only upon the vote of its board. The affairs of the Association shall be conducted by, and the Association shall act through, its Board and such officers as the Board may elect or appoint, in accordance with the Declaration, the Articles, and the By-Laws, as the same may be amended from time to time. The Association may act only as determined by a majority vote of the Board, except where a vote of more than a majority of the Board is specifically required in this Declaration, the Articles or the By-Laws.

**Section 3.** POWERS AND DUTIES OF THE ASSOCIATION. The Association shall have such rights, powers, and duties as set forth in this Declaration, the Articles and By-Laws, as same may be amended from time to time, which shall include, but not be limited to, the following:

a. **PROPERTY INSURANCE.** The Association may keep any Improvements in the Commons insured against loss or damage from such hazards and with such policy limits as it may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage from such hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. Premiums for all insurance carried by the Association shall be common expense included in the assessments made by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property on which the insurance was carried or otherwise utilized as determined by the Association.

b. **LIABILITY INSURANCE.** The Association shall have the power to obtain comprehensive public liability insurance, in such limits as it shall deem desirable, and workmen's

compensation insurance and other liability insurance as it may deem desirable. Insureds may include the Association, the Owners, the Board, the Declarant and managing agents (if any). The premiums for liability insurance are common expenses included in the assessments made by the Association.

c. OTHER INSURANCE. The Board, at its option, may elect to cause the Association to obtain one or more blanket insurance policies or umbrella insurance policies, as to one or more of the types of insurance deemed advisable by the Board with such policy limits and insureds as may be determined by the Board. If such policy or policies are obtained, the premiums shall be common expenses paid from the assessments made by the Association.

Section 4. THE HIGH GARDEN RULES. The Association may, from time to time, adopt, amend, repeal, and enforce rules and regulations to be known as the HIGH GARDEN Rules. The HIGH GARDEN Rules may restrict and govern the use of any area by any Owner, or by an invitee of such Owner; provided, however, that the HIGH GARDEN Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or By-Laws. A copy of the HIGH GARDEN Rules, as they may from time to time be adopted, amended, or repealed, shall be available to each Owner.

Section 5. ENFORCEMENT OF RULES. For each violation by an Owner or Owner's invitee of the provisions of this Declaration, the Articles, the By-Laws, the Architectural Rules, or the HIGH GARDEN Rules, the Board may, upon ten days' written notice, suspend an Owner's voting rights. In addition to the suspension provided herein, the Board may seek an injunction or other redress in a court of law. Any Owner against whom such injunction or redress is sought shall be liable for attorney's fees and costs incurred by the Board on behalf of the Association, and such amounts may be collected in the same manner as assessments as provided herein. Any suspension or injunctive action must be approved by the Board, and all decisions of the Board shall be final. The remedies provided in this paragraph are cumulative and may not be exercised simultaneously with, and in the remedies provided in this Declaration for collection of assessments.

Section 6. PERSONAL LIABILITY. No member of the Board, or of any Committee of the Association, or any officers of the Association, or the Manager, shall be personally liable to any Owner or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the Officers, or any other representative or employee of the Association, or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful misconduct.

## MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every Owner of a Lot shall be a member of the Association. Every member of the Association agrees to uphold and abide by and under the Declaration of Covenants, Conditions, and Restrictions of HIGH GARDEN Phase I, II, III, IV.

Section 2. DIRECTORS. The Association shall have five directors. Declarant shall have the option to appoint two of the five directors at any annual meeting of the members held at a time when Declarant is Owner of one or more Lots. The remaining directors shall be elected by vote of all of the Owners, including the Declarant. If Declarant does not exercise its option to appoint two directors at a particular annual meeting of the members, it may, nonetheless, exercise such option at subsequent annual meetings of the members, provided Declarant is Owner of one or more Lots at the time of such subsequent annual meetings.

Section 3. VOTING. Owners shall vote only by Lot, and each Lot shall have one vote. Fractional votes shall not be allowed. In the event Owners of a Lot are unable to agree among themselves as to how the vote of that Lot shall be cast, they shall lose their right to cast the vote for such Lot on the matter in question. When any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot, unless the Owner or Owners are present and object at the time the vote is cast.

**Section 4. ELECTION OF DIRECTORS.** In any election of the members of the Board, one ballot shall be taken after nominations have been received. Each Lot shall have one vote. The three nominees receiving the highest number of votes shall be deemed elected to the Board. At such time as Declarant is no longer an Owner (or does not exercise its option to appoint two directors), the five nominees receiving the highest number of votes shall be deemed elected to the Board. Any tie votes shall be broken by lottery.

**Section 5. RIGHTS OF MEMBERS.** Each member shall have such other rights, duties, and obligations as set forth in the Articles, By-Laws, Architectural Rules, and HIGH GARDEN Rules as same may be amended from time to time.

**Section 6. TRANSFERABILITY.** The Association membership of an Owner shall be appurtenant to the Lot of said Owner. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of record of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Oklahoma. Any attempt to make a prohibited transfer shall be void. Any transfer of record of ownership to a Lot shall operate to transfer said membership to the new Owner thereof.

**Section 7. POWER TO BORROW.** The Association may borrow, for Association purposes, but borrowings in the excess of five thousand dollars (\$5,000) of aggregate Association debt shall require the prior approval of at least two-thirds (2/3rds) of the votes of the Lots. No Owner shall be required to become personally obligated on debts of the Association to third parties, unless they do so voluntarily. No debt financing may extend over a period of more than five years. The Association may not mortgage its real estate or Improvements, but may pledge its tangible personal property to secure its debts.

#### **COVENANT FOR ASSESSMENTS**

**Section 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Each purchaser 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 such assessments as may become applicable to their Lots, as provided below. There is hereby created in favor of the Association the right to claim a lien, with power of sale, on each and every Lot within HIGH GARDEN Phase I to secure payment to the Association of any and all assessments levied against such Lot as provided herein. Each such assessment shall also be the personal obligation of the Owner of such Lot at the time when the assessment was levied against such Lot. The personal obligation for delinquent assessments shall not pass to successor Owners unless expressly assumed by them, but shall remain a lien on such Lot (except as provided in Section 12, below) and the personal obligation of the Owner who was Owner at the time the assessment was made.

**Section 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in HIGH GARDEN Phase I, II, III, IV for the maintenance and improvement of the Commons, and for maintaining the overall aesthetic beauty of HIGH GARDEN Phase I, II, III & IV, and to cover the cost of the services and materials incidental thereto and incidental to the operation of the Association, including the establishment of reserves for repair and replacement of capital items.

**Section 3. HIGH GARDEN AMOUNT OF REGULAR ASSESSMENT.** Regular assessments shall be made on an annual basis, and shall be in an equal amount for each and every Lot subject assessment. The maximum regular assessment for the calendar year, 2018, shall be nine hundred dollars (\$900) per Lot. For calendar year 2019, the maximum regular assessment per Lot shall be not in excess of twenty percent (20%) above the maximum regular assessment permissible for the pervious year. For calendar year 2018, and after, the Board may set the regular assessment in any amount per Lot not in excess of the maximum regular assessment for the year for which the assessment is made. The regular assessment per Lot may be set in excess of the maximum only if first recommended by the Board and



approved by the votes of two-thirds (2/3rds) of all Lots subject to regular assessments. All builders pay a reduced fee of \$250 a year until their houses are sold.

**Section 4. REGULAR ASSESSMENT OBLIGATION.** Lots and the Owners thereof (except for the Declarant and Lots owned by the Declarant as well as lots owned by builders) shall be obligated for any regular assessment per Lot made by the Association.

**Section 5. SPECIAL ASSESSMENTS.** Special assessments are applicable only to all Owners of Improved Lots, and must first be recommended by the Board and then approved by a majority of the votes of all Improved Lots; provided, however, no special assessment may be voted which shall require the Owner of an Improved Lot to pay total special assessments in excess of an amount equal to the maximum regular assessment applicable to such year, unless approved by at least two-thirds (2/3rds) of the votes of all Improved Lots. Special assessments shall be applicable to not more than three calendar years after the date of assessment. Special assessments shall be only for Association purposes, including, but not limited to, defraying the cost of any construction, reconstruction, repair, or replacement of items in or a part of the Commons, and the establishment of reserves for such costs.

**Section 6. DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES.** The regular assessment period shall be the calendar year. The regular assessment shall be established at least ten (10) days in advance of each regular assessment period. Written notice of the regular assessment and each special assessment shall be sent to every Owner subject thereto. The due date (or dates, if made payable in installments) shall be established by the Board. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 7. EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.** Each Owner of any Lot shall be deemed to covenant and agree to the enforcement of the Assessments in the manner herein specified. If any assessment, or installment thereof, is not paid by the due date specified by the Board, the Owner or Owners of the Lot for which the delinquent assessment or installment is unpaid shall lose the right to cast a vote of that Lot in the Association until all amounts due are paid in full. The Association may employ an attorney or attorneys for collection of any delinquent assessment or installment thereof, whether by suit or otherwise, or to enforce compliance with or for specific performance of the terms and conditions of this Declaration, the Articles, By-Laws, Architectural Rules or HIGH GARDEN Rules. In addition to any amounts due or any relief for remedy obtained by the Association against an Owner, such Owner agrees to pay the Association its reasonable attorney's fees, plus interest and costs thereby incurred. Any interest provided in this Declaration shall be charged at an annual rate equal to the National Bank of Commerce and Trust Company of Oklahoma City, Oklahoma, prime rate, plus three percent (3%), and shall vary with any changes in said prime rate during the period for which interest is computed. In the event an assessment or installment thereof is not paid when due, and thus becomes a delinquent obligation, or in the event an Owner fails to perform or comply with any other obligation of this Declaration, the Articles, By-Laws, Architectural Rules or HIGH GARDEN Rules, then (in addition to any other remedies herein or by law or by equity provided) the Association may enforce each such obligation by either or both of the following procedures:

a. **ENFORCEMENT BY SUIT.** The Board may cause a suit to be commenced and maintained in the name of the Association against an Owner to collect such delinquent assessments; to cause a temporary and/or permanent injunction or mandatory injunction to issue for compliance with or perform of said obligation by an Owner and/or his invitees; and to seek damages against an Owner or his invitee for violation of said obligation. Any judgement rendered in favor of the Association in any such action shall include (but not necessarily be limited to) the amount of any delinquency, together with interest thereon from the date of the delinquency at the rate provided above, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the Owner.

b. **ENFORCEMENT BY LIEN.** The Association may file of record a lien in favor of the Association, against any Lot with a delinquent assessment. Such a lien shall be executed and acknowledged by an officer of the Association, and shall contain substantially the following information:

- (1) The name of the Owner of the Lot with the delinquent assessment;
- (2) The legal description and street address of the Lot against which lien is filed.
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, court costs, and reasonable attorneys' fees, all of which constitute the amount of the lien;
- (4) A recital to the effect that the lien is filed by the Association pursuant to the Declaration. Upon recordation of a duly executed original or copy of such lien, then the lien shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied, and shall have priority over any claim of homestead or other exemption and over all liens, mortgages, Deeds of Trust, or claims or encumbrances created subsequent to the recordation of the lien provided hereby, except only tax liens for real property taxes on any Lot, and assessments on any Lot in favor of any municipal or governmental assessing unit. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Oklahoma, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of the Association. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. Each Owner, by becoming an Owner of a Lot in HIGH GARDEN, hereby expressly waives any objection to the enforcement and foreclosure of this lien substantially in the manner provided herein, or in any other manner provided by law.

Section 12. **PRIORITY OF LIEN.** The sale or transfer of any Lot pursuant to the foreclosure of any prior lien shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from Liability for any assessments thereafter becoming due or from the lien thereof, nor shall the Owner or Owners prior to foreclosure sale or transfer be relieved of his or their personal liability for the assessments unpaid prior to such sale or transfer. Any other sale or transfer of any Lot shall not affect the assessment lien.

### **IMPROVEMENTS BY DECLARANT**

Section 1. **IMPROVEMENTS.** Declarant shall, at its expense, for the benefit of the Subdivision Plat and Homeowners Association, complete improvements which include a perimeter fence along Douglas, an entryway fence, a lighted subdivision entry identification sign, a gate, professional landscaping. These improvements shall constitute the "Common Area", or the "Commons". Declarant makes no warranties (implied or otherwise) regarding any improvements in HIGH GARDEN Commons, but assigns the Association all warranties (if any) made by third parties with respect to said improvements.

Section 2. **DESIGNATION OF ADDITIONAL COMMON AREA.** Maintenance of the Common Areas and/or private drainage easements shall be the responsibility of the HIGH GARDEN Homeowners Association. No structures storage of material, grading, fill or other obstructions, including fences, either temporary or permanent, that may cause a blockage of flow or an adverse effect on the functioning for the use of conveyance of storm water and/or drainage easements as shown on the recorded plat. Certain amenities such as, but not limited to walks, benches, piers, docks, fences as currently installed, and the swimming pool and clubhouse as currently installed shall be permitted if installed and maintained to meet the requirements of this paragraph.

Section 3. **ADDITIONAL IMPROVEMENTS.** Though Declarant has no obligation for additional improvements, Declarant or any other party may, with the consent of the Board and the prior written approval of the Homeowner's Association, build or construct additional improvements, which shall become a part of HIGH GARDEN Commons and be for the benefit of all Owners.

**MAINTENANCE BY ASSOCIATION.** The improvements and greenbelt constituting the Commons shall be maintained and repaired by the Homeowners Association. The Association may, at any time, as to any part of any Common Area:

- a. Repair, maintain, reconstruct, replace, refinish or complete any Improvement or portion thereof upon any such area in accordance with the last plans thereof approved by the Homeowner's Association; the original plans for the Improvement; or, if neither of the foregoing is applicable and if such Improvement was in existence prior to this Declaration, then in accordance with the original design, finish, or standard of construction of such Improvement as same existed;
- b. Construct, reconstruct, repair, replace, maintain, resurface or refinish any road improvement or surface upon any portion of the Commons, whether used as a road, street, walk, driveway, parking area, footpath or trail;
- c. Maintain, remove, replace or treat injured and diseased trees or other vegetation in any common area, and plant trees shrubs, and ground cover to the extent that the Association deems desirable for the conservation of water and soil or for aesthetic purposes;
- d. Place and maintain upon any such area such signs as the Association may deem appropriate for the proper identification, use, and regulation thereof; and,
- e. Do all such other and further acts which the Association deems necessary to maintain, preserve and protect any common area and the beauty thereof, in accordance with the general purposes specified in this Declaration. The Association shall be the sole judge as to the appropriate maintenance, preservation and protection of all grounds within any common area.

**DAMAGE OR DESTRUCTION OF THE COMMONS BY OWNERS.** In the event any part of the Commons is damaged or destroyed by an Owner or any of an Owner's invitees, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specification of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by such Owner, upon demand, to the Association, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

**USE BY MOTOR VEHICLES.** No motor vehicle of any description, other than vehicles used in maintenance of the Commons, shall be allowed on the unpaved portions of the Commons, except in parking areas (if any) designated in the HIGH GARDEN Rules, or when specifically authorized by the Board. The Board's right to control the use of any hard-surfaced portion of the Commons shall include but not be limited to, establishing speed limits and parking rules.

**REGULATION.** The Association shall have the exclusive right to make, promulgate, supplement, amend, change, or revoke the HIGH GARDEN Rules pertaining to the use and operation of the Commons and all other property within HIGH GARDEN. All owners shall abide by the HIGH GARDEN Rules and shall be responsible for all acts of the Owner's invitees.

**UNIFORM MAINTENANCE.** Declarant, and each Owner of any Lot in HIGH GARDEN Phase I, and the Association, hereby covenant each with the other that any maintenance provided by the Association for the Commons, and the Improvements located thereon, shall be in a substantially uniform manner and to uniform standards consistent with the intent of this Declaration. Such maintenance shall be performed by the Association.

**IMPROVEMENTS.** No Improvement shall be placed or constructed upon or added to the Commons except with the prior written approval of the Homeowner's Association and the Board, except as otherwise specifically provided herein.

## **GENERAL PROVISIONS**

**Section 1. ENFORCEMENT.** Any Owner, as well as the Association, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, charges, and rules now or hereafter imposed by the provisions of this Declaration. Failure by any Owner or the Association to enforce any such restriction, condition, covenant, reservation, lien, charge, or rule now or hereafter contained in the Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. SEVERABILITY.** Every term and provision of this Declaration, and of the Articles, By-Laws, Architectural Rules, and HIGH GARDEN Rules referenced herein, is intended to be severable. If any such term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of any other of such terms and provisions.

**Section 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run with and bind the Property and each Owner hereof and inure to the benefit of each Owner and the Association from and after the date this Declaration is recorded. All the Owners of at least eighty percent (80%) of the Lots may amend this Declaration at any time. Any such amendment to the Declaration must be recorded.

**Section 4. VIOLATIONS AND NUISANCE.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner or Owners of Lots within HIGH GARDEN Phase I. However, any other provisions to the contrary notwithstanding, only the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

**Section 5. VIOLATION OF LAW.** Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation, or use of any property within HIGH GARDEN is hereby declared to be a violation of the Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

**Section 6. REMEDIES CUMULATIVE.** Each remedy provided by this Declaration is cumulative and not exclusive.

**Section 7. DELIVERY OF NOTICES AND DOCUMENTS.** Any written notice or other documents relating to or required by this creation of the HIGH GARDEN HOMEOWNERS ASSOCIATION, may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the Certified United States Mail, postage prepaid, addressed as follows:

- |                        |  |
|------------------------|--|
| If to the Association: | c/o the registered agent of HIGH GARDEN Homeowners Association, Inc., an Oklahoma Corporation. |
| If to an Owner:        | To the address last furnished by an Owner to the Association                                   |

Provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the registered agent of the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the registered agent of the Association, and shall promptly notify the Association in writing of any subsequent change of address. If no address has been furnished to the Association by an Owner, notice may be given an Owner by posting written notice on the Owner's Lot.

**Section 8. RIGHT OF DECLARANT TO ASSIGN.** The Declarant, by an appropriate instrument or instruments, may assign or convey to any person, persons or entity any or all of the rights, reservations, easements, and privileges or any one or more of them at any time or times in the same way and manner as provided for in **Section 7** of this instrument.

**Section 9. THE DECLARATION.** By becoming an Owner of a lot, each Owner for himself, or itself, his heirs, personal representatives, successors, transferees, and assigns, becomes bound, accepts and agrees to all of the rights, powers, easements, provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed and granted by this Declaration and any amendments thereof. In addition, each such Owner by so doing, thereby acknowledges that this Declaration sets forth a

general plan for the improvement and development of HIGH GARDEN and hereby evidences his interest that all rights, powers, easements, provisions, restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, successors and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various future owners of Lots in HIGH GARDEN Phase I.

Section 10. ENUMERATION OF SPECIFICS. As used in this Declaration, the enumeration of items within a class shall not be deemed to limit the intended expression to those items only, but shall be broadly interpreted to effect the overall intent of this Declaration so that such expression shall include all things which might reasonably fall within such class of items so enumerated and similar or closely related classes, so long as such interpretation is beneficial to and in the furtherance of the purposes of this Declaration.

Section 11. DESCRIPTIVE HEADINGS. Captions and headings contained in this Declaration are for convenience and reference purposes only, and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Declaration or of any provision hereof.

Section 12. OKLAHOMA LAW. The interpretation and enforcement of this Declaration shall be governed by the laws of the State of Oklahoma.

IN WITNESS WHEREOF, the undersigned, being the Declarant, Owner, and Developer herein, have hereunto set their hand this 25 day May, 2018.

HIGH GARDEN DEVELOPMENT, LLC.

By Michael Love  
Michael Love, Manager

STATE OF OKLAHOMA

LLC. ACKNOWLEDGEMENT

COUNTY OF OKLAHOMA

On this 25 day of May, 2018, before me, the undersigned Notary Public in and for the County and State, aforesaid, personally appeared Michael Love to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its Manager and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

MY COMMISSION EXPIRES:  
05/31/2022

Janie U. Go  
Notary Public

