

598468

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR CARTER MOUNTAIN WEST**

**PHASE II**

I-2001-598468 Book 1103 Pg. 517
11/05/2021 2:48 pm Pg 0517-0527
Fee: \$ 38.00 Doc: \$ 0.00
Karen Bryan - McCurtain County Clerk
State of Oklahoma

KSBryan

KNOW ALL MEN BY THESE PRESENTS:

Whereas, MAG 4 Development, LLC (the "Declarant") is the owner of certain real property located in the **W½ of Section 33, Township 3 South, Range 24 East** of the Indian Base and Meridian, McCurtain County, Oklahoma McCurtain County, Oklahoma, as described on "Exhibit A" attached hereto and made a part hereof.

Whereas, on May 18, 2021, Declarant recorded a Declaration of Covenants, Restrictions and Easements for Carter Mountain West in Book 1081 at Page 289 of the office of the County Clerk, McCurtain County, Oklahoma (the "Carter Mountain West Declaration").

Whereas, the Carter Mountain West Declaration recited that said development would be divided into three phases, and that property in addition to the original Carter Mountain West development may be subjected to the provisions of the Carter Mountain West Declaration.

Whereas, Declarant intends to develop on lands, including real property above, a development to be known as CARTER MOUNTAIN WEST PHASE II, (hereafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of residential property within the property now or hereafter made subject to this Declaration, by the recording of this Declaration and amendments thereto.

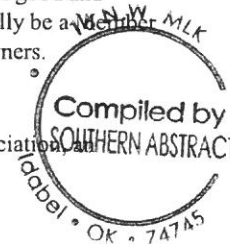
MAG 4 Development, LLC does hereby declare that the Development will be divided into three phases as shown on the plat of CARTER MOUNTAIN WEST, recorded in Idabel, McCurtain County, Oklahoma. The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

Declarant has caused the Association (as hereinafter defined) to be formed as an Oklahoma nonprofit corporation to perform certain functions for the common good and general welfare of the Owners. Each and every very Owner shall automatically be a member of the Association and such Membership is deemed a requirement for all Owners.

ARTICLE I - DEFINITIONS

Section 1.01 Association means Carter Mountain West Homeowners Association, an Oklahoma nonprofit corporation.

Section 1.02 Board means the Board of Directors of the Association.



Section 1.03 Building means an enclosed Structure with a roof and walls and includes attached porches, patios, breezeways and decks.

Section 1.04 Bylaws means the Bylaws of the Association.

Section 1.05 Common Property means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners, including but not limited to all roads, walkways, recreational areas, green areas and other improvements made by the Declarant.

Section 1.06 Declarant means MAG 4 Development, LLC

Section 1.07 Declaration means this instrument, by which the Property is submitted to the provisions of 60 O.S. §§851-858, together with such amendments to this instrument as may hereafter from time to time be lawfully made.

Section 1.08 Dwelling means the primary Building on a Lot used as a single-family residence or for overnight rental.

Section 1.09 Easement means any easement pertaining to the Development and recorded in Idabel, McCurtain County, Oklahoma.

Section 1.10 Lot means any parcel of land shown upon the recorded Plat of the Development.

Section 1.11 Member means any member of the Association.

Section 1.12 Membership means the collective total of all Members of the Association.

Section 1.13 Owner means the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having an interest held to secure the performance of an obligation.

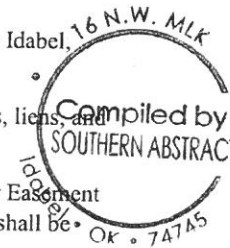
Section 1.14 Property means that real property hereinabove described, together with such additional real property as may be subjected to the provisions of the Declarant in accordance with the provisions hereof.

Section 1.15 Plat means the plat of Carter Mountain West Phase II, recorded in Idabel, McCurtain County, Oklahoma.

Section 1.16 Restrictions means all covenants, restrictions, easements, changes, liens, and other obligations created or imposed by this Declaration.

Section 1.17 Roadway means that area or areas within the Roadway and Utility Easement for the use as a vehicular right-of-way by the Lot Owners and invitees which shall be maintained by the Association.

Section 1.18 Rules and Regulations means policies, guidelines and rules for Owners to follow that are established by the Board in accordance with the Declaration and Bylaws.



Section 1.19 Structure means anything made or constructed by a person.

ARTICLE II - COMMON PROPERTY

Section 2.01 Conveyance of Common Property Declarant may convey to the Association or grant the Association, at no expense to the Association real and personal property for natural area preservation and for the use and enjoyment of the Owners and referred to as Common Property. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all its Members. Any such conveyance of Common Property by the Declarant to the Association will be subject to all the covenants and restrictions set forth in this Declaration, as amended, all ad valorem taxes, and all Easements to which the Common Property is subject. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed to the Association.

ARTICLE III - PROTECTIVE COVENANTS AND RESTRICTIONS

Section 3.01 Land Use

- (a) Each Lot shall be used only for single family residential purposes or for overnight rental.
- (b) Each Lot under 3.0 acres in size shall be limited to one single family Dwelling.
- (c) Easements for installation and maintenance of public or private utilities and drainage facilities herein reserved and within these Easements no structure, planting, or other material may be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through the drainage channels in the Easements. The Easement area of each Lot and all improvements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- (d) No more than 50 percent of the trees shall be removed that are more than 6 inches in diameter at 6 feet from the ground.

Section 3.02 Architectural Control

- (a) No Structure or improvement shall be erected, placed, added to or altered on any Lot until the building plans and specifications and a site plan showing the location of the proposed Structure or improvement has been submitted to the Association as being in compliance with these Restrictions as to use, quality of workmanship and materials,



harmony of external design and external colors with existing and proposed Structures, and location with respect to topography, finished grade elevation, and building lines.

- (b) The site plan, building plans and specifications shall be approved in writing by the Association before any construction begins.

Section 3.03 Types of Buildings

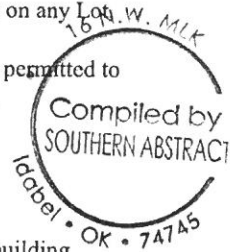
- (a) No Structures shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family Dwelling, a private garage and other outbuildings incidental to residential use of the building site.
- (b) All Structures shall be of conformity and harmony of exterior design with existing Structures in the Development and as to location of the Building with respect to topography and finished grade elevation in the Development.
- (c) Roof pitch and colors are to be consistent within the Development.
- (d) All Dwellings shall contain a minimum of 1,100 square feet of living space. The "living space" is defined as that square footage under HVAC, exclusive of any garage, porches, patios and decks under a common roof.
- (e) All Dwellings and other Buildings incidental to the use of the Lot for residential purposes shall be erected on the Lot and shall be underpinned. Except as provided herein, no mobile home, modular home, prefabricated home, residential trailer, tent or Structure of any type or character shall be moved onto, placed on or allowed to remain on any Lot. A motor home or camping trailer may be placed on a Lot by the Owner of the Lot for a period not exceed 180 days, for use during clearing and construction on the Lot.

Section 3.04 Location of Buildings and Improvements

- (a) No part of any Building shall be erected, added to or altered so as to be within thirty (30) feet of an Easement or within thirty (30) feet of any boundary line on any Lot.
- (b) No Structure or other improvement shall be erected, placed, planted or permitted to remain in the Easement which interferes with the use of the Easement.
- (c) All propane tanks must be installed underground.

Section 3.05 Building Materials

- (a) Exterior walls of all Dwellings and other Buildings shall be of native building materials, such as rock, stone or wood which shall cover no less than 90% (excluding glass windows and doors) of the exterior. No more than 10% of the non-native materials, such as brick, pressed wood, or metal, shall be used on the exterior walls.



Buildings incidental to the use of the Lot for residential purposes shall be constructed of materials similar in design and color to the Dwelling.

- (b) Additions to or alterations to an existing Dwelling or other Building shall match as closely as possible the design, materials and colors of the existing Dwelling or Building.
- (c) No metal Building shall be erected, placed or allowed to remain on any Lot.

Section 3.06 Driveways

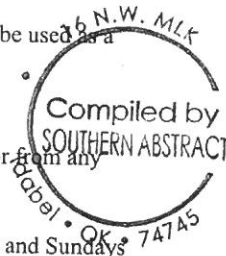
- (a) Driveways for personal use shall originate from a point in the Easement and terminate at a point in the Lot.
- (b) Driveways through a Lot to serve property outside of the Development are prohibited without express written consent of all parties involved.

Section 3.07 Prohibited Uses

- (a) No motor vehicle shall be parked on a Lot unless the motor vehicle is on inflated tires and is mechanically operational.
- (b) No Lot shall be used for outside storage. No materials or supplies shall be kept or allowed to remain on a Lot unless stored in a Building. Provided however, materials or supplies for use in a Building or Structure may be kept on a Lot for a period not to exceed ninety (90) days during construction.
- (c) No debris, junk or unsightly accumulation of materials shall be placed or allowed to remain on any Lot.
- (d) No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers at the rear of the Dwelling out of sight from the Roadway, and placed roadside on the day of garbage pickup.
- (e) No Building on any Lot under 3.0 acres, other than the Dwelling, shall be used as a residence.

Section 3.08 Prohibited Activities

- (a) No business or commercial activity or any kind shall be conducted on or from any Lot other than overnight rental of Dwellings.
- (b) Exterior construction work and land clearing is prohibited on Saturdays and Sundays within 1,000 feet of a Dwelling that is inhabited or rented.
- (c) Discharging a firearm is prohibited.



- (d) Except as otherwise provided herein, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. Dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and do not become a nuisance to surrounding Owners.
- (e) No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which is or becomes an annoyance or nuisance to the neighborhood, including but not limited to, making any unreasonably loud or disturbing noise which substantially impairs the enjoyment of surrounding Owners, their renters, guests, or invitees.
- (f) The operation of ATV's, dirt bikes, and all other motorized off-road vehicles, shall have limited authority to use Development Roadways only for egress to and from the National Forrest, or to and from other Dwellings in the Development. All such vehicles must be equipped with factory noise suppressors and factory spark arresters, be driven safely at speeds under ten (10) miles per hour at all times while in the Development, and all such vehicles must be compliant with Section 3.08 (e).

Section 3.09 Prohibited Structures

- (a) No fence shall be placed or permitted to remain on any Lot without express written consent of the HOA.
- (b) No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than two square feet in area and one sign of not more than four square feet in area advertising the property for sale, and signs used by a building contractor during construction.

Section 3.10 Subdividing a Lot No Lot shall be subdivided without the written consent of the Declarant.

Section 3.11 Consolidation of Lots Any number of adjacent Lots can be consolidated into one Lot and recorded in the Office of the County Clerk, McCurtain County, Oklahoma. If two or more Lots, or portions of two or more Lots are consolidated into a single building site then the setback requirements for Buildings shall apply to the resulting site as if it were one original, platted Lot.

ARTICLE IV - HOMEOWNERS ASSOCIATION

Section 4.01 Purpose of the Association Carter Mountain West Homeowners Association, a non-profit corporation incorporated under the laws of the State of Oklahoma shall (1) administer and enforce the covenants, conditions and restrictions, Rules and Regulations; (2) collect assessments and disburse funds in accordance with procedures established herein for the improvement and maintenance of the Common Property; and (3) perform



such other acts which are provided for and generally benefit the Association and its Members.

Section 4.02 Membership

- (a) Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. This association will be comprised of all phases in Carter Mountain West Development. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For the purposes of voting, there shall be two (2) classes of Members as set forth in Section 4.03.
- (b) Each Owner shall register as a Member of the Association and provide the Association a mailing address and contact information including email address. Said registration may be made to the Association's email address which shall be provided upon request.

Section 4.03 Voting Rights

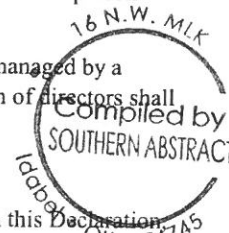
- (a) Each Owner of a Lot with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot owned by such Owner. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the Secretary of the Association.
- (b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned. Class B Membership shall cease and be converted to a Class A Membership at such time as the Declarant no longer retains control of the Association as set forth in Section 4.06.
- (c) Total votes of the Association shall include all Lots in all phases of the Development.

Section 4.04 Termination of Membership Membership shall cease only when a person ceases to be an Owner.

Section 4.05 Board of Directors The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be set forth in the Bylaws of the Association.

Section 4.06 Control of Declarant

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association, and any officer or officers of the Association until the first of the following events



shall occur; (i) the expiration of seven (7) years after the date of the recording of this Declaration.; (ii) the date upon which eighty percent (80%) of all Lots submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an expressed amendment to this Declaration executed and recorded by the Declarant.

- (b) Upon the expiration of the period of Declarant's right to appoint and remove Directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession.

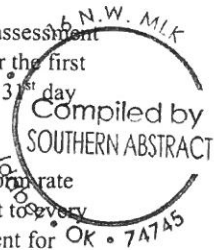
Section 4.07 Annual Assessment Each Owner of a Lot by acceptance of a deed, whether expressed in the deed, shall be deemed to covenant to pay to the Association a fee of \$400 per year, or such other amount as may be established by the Association. Declarant shall not be liable for the payment of any assessments for so long as the Declarant has the authority to appoint directors and officers of the Association as set forth in Section 4.06.

Section 4.08 Use of Annual Assessments The annual assessments shall be used primarily for the improvement and maintenance of the Roadways, Easements and Common Property, within the Development as determined by the Association.

Section 4.09 Special Assessments In addition to the annual assessments authorized in this Article IV, the Association may levy, in any assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated expenses. Such special assessments may be levied by the Board in any assessment year without approval of the Members.

Section 4.10 Date of Commencement of Annual Assessments The first annual assessment year shall commence as to all Lots on date of purchase and the amount owed for the first year prorated from date of purchase to the end of the current year ending on the 31st day of December.

Section 4.11 Uniform Rate of Assessment Annual assessments shall be at a uniform rate for all Lots. Written notice of the amount of the annual assessment shall be sent to every Owner not less than thirty days before the payment is due. The annual assessment for any given year shall be due on the 31st day of January.



Section 4.12 Effect of Nonpayment and Remedies of the Association In the event the assessment is not paid when due, together with interests, costs, and reasonable attorney's fees to collect the assessment, shall be the personal obligation of the Owner of the Lot at the time when the assessment fell due. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 2.0% per month.

ARTICLE V - GENERAL PROVISIONS

Section 5.01 Enforcement The Association, or any other Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this instrument. Failure by the Association or by an Owner to enforce any covenant or restriction herein shall not be deemed a waiver of the right to do so thereafter.

Section 5.02 Amendments The covenants and restrictions of the Declaration shall run with and bind the land, for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 5.03 Amendment by Declarant This Declaration may not be amended during the first seven (7) years except by the Declarant or at such time as the Declarant longer retains control of the Association as set forth in Section 4.06. Declarant may amend this Declaration by an instrument in writing, filed and recorded in Idabel, McCurtain County, Oklahoma.

Section 5.04 Amendment by the Association Amendments to this Declaration, other than those authorized by Section 5.03, shall be adopted at least two-thirds (2/3) of the total votes in the Association.

Section 5.05 Severability Invalidation of a covenant or restriction by judgement or court order shall not affect any other provision which shall remain in effect.

Signed this 5th day of November, 2021

MAG 4 DEVELOPMENT, LLC

By: _____

Manager

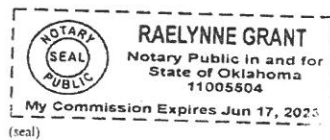


STATE OF OKLAHOMA)
) SS:
McCURTAIN COUNTY)

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Fee: \$ 38.00 Doc: \$ 0.00
Karen Bryan - McCurtain County Clerk
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Before me, the undersigned, a Notary Public, in and for said County and State, on this
5th day of November, 2021, personally appeared VANCE ANDREW
SMITH as Manager of MAG 4 Development, LLC, 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 company, for the uses and purposes therein set forth.

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



Raelynne Grant
Notary Public



