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BOOK 618 PAGE 001

DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND LIENS OF
MAHOGANY VISTAS HOMEOWNERS
ASSOCIATION -

THIS DECLARATION, madw on the date hereinafter set forth by Carmacson Partnership, hereinafter referred to as "Declarant"; Robert J. Carmack, Betty J. Carmack, Carroll G. Wilson, Betsy Wilson.

WITNESSETH:

WHEREAS, Declarant is now the owner of certain lands in Garfield County, State of Colorado, more particularly described as follows:

Lot 6,
Block 3,
Mahogany Addition to the City of Rifle,
Replatted as The Mahogany Vistas, Lots
1 through 6.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, servitudes, restrictions, liens, covenants and conditions, which are established, declared and adopted for the purpose of promoting the social welfare, common good and general welfare of the people of the community, protecting the value and desirability and enhancing the safety and habitability of the said real property and to bring about civic betterments and social improvements, to run with the said lands and be binding upon all parties having any rights, title or interest in and to the described real property or any part thereof, their heirs, personal representatives, successors and assigns, and to inure to the benefit of each owner thereof.

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ARTICLE IDEFINITIONS

Section 1. "Association" shall mean and refer to the Mahogany Vistas Homeowners Association, a Colorado unincorporated association not for profit, and its successors and assigns. "Board of Managers" or "Board" shall mean and refer to the duly elected and qualified members of the board of managers of the Association, acting in an official capacity.

Section 2. "Owner" shall mean and refer to the record title holder, whether one or more persons or entities, of a fee simple interest in any lot which is a part of the property; provided, however, that upon entering into a purchase contract or option, such purchaser and not the record title holder shall be deemed to be the owner for all purposes herein. The term "owner" shall also include declarant and its successors and assigns with respect to all lots held in the name of Declarant and which declarant has not agreed to sell under contract or option.

Section 3. "Property" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought under this Declaration.

Section 4. "Common facilities" shall mean and refer to the common open space, parks, parking lots, recreational facilities as indicated on the recorded plat thereof, Garfield County, Colorado which is included within the Property, together with any and all real and personal property hereafter owned or controlled by the Association for the common use and benefit of the owners and the community, together with all improvements thereon, if any, and any easements, fixtures or appurtenances used therewith or attached thereto, subject to rights of way, easements, liens, encumbrances, reservations and restrictions of record, if any.

Every owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of the common facilities by the Association for the benefit and enjoyment of all owners in accordance with the provisions of this Declaration and the Bylaws and rules and regulations of the Association.

Section 5. "Lot" shall mean and refer to each numbered Lot of the Property, as shown on the recorded plat recorded as Document number _____ in the office of the Clerk and Recorder of Garfield County, Colorado, excepting, however, any portion of the common facilities.

Section 6. "Member" shall mean and refer to any person or entity who is a member in the Association.

Section 7. "Common elements" shall mean and refer to the land or interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, balls, corridors, lobbies, stairs, stairways, fire escapes entrances, and exits of such building or buildings; the basements, yards, gardens, parking areas, and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNER'S RIGHTS. Every owner shall have a right to use and to benefit from the common facilities intended

for the use and enjoyment of all the members of the Association.

Such right 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 and assessments to each owner for the use and enjoyment of the common facilities, for the acquisition, maintenance, repair, replacement, upkeep, operation, and improvement thereof and to establish reasonable reserves for depreciation and contingencies;
- (b) the right of the Association to adopt rules and regulations governing such use and enjoyment, and to suspend the voting rights and right to use and to benefit from the common facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period of time as determined by the Association for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate, transfer or lease all or any part of the common facilities to any public agency, municipal or quasi-municipal authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by the members;
- (d) the right of the Association to borrow money for the purpose of improving the common facilities and in aid thereof to mortgage said common facilities; and to take such steps as may be reasonably necessary to protect the common facilities from foreclosures; and
- (e) the right of the Association to close or limit the use of the common facilities while maintaining or making replacements therein or thereto.
- (f) every owner of a Lot shall have the right to use and enjoy the common elements subject to the right of the Association to charge reasonable fees and assessments to each Lot Owner for the acquisition, maintenance, repair, replacement, upkeep, operation and improvement thereof and to establish reasonable reserves for depreciation and contingencies.

Section 2. DELEGATION OF USE. Any owner may delegate his right of use and benefit from the common facilities to the members of his family, his tenants or guests who occupy his Lot.

Section 3. PERSONAL PROPERTY. The Association may acquire and hold for the use and benefit of all members of the Association tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest therein shall not be transferable except that the transfer of a Lot shall transfer to the transferee all of the transferor's beneficial interest in such personal property without any reference thereto or execution of a bill of sale. Each owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other owners, subject to the provision hereof and the By-laws, rules and regulations of the Association. Sale of a Lot under foreclosure or execution shall entitle the purchaser thereof to the beneficial interest in the personal property associated with the Lot and to membership in the Association.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot. When more than one person holds a beneficial interest in any Lot as joint tenant, tenant in common, partner, shareholder or otherwise, all such persons shall be members, but the vote or votes attributable to such Lot shall be cast as such persons among themselves determine and no division of the vote or votes attributable to such Lot shall be permitted. All matters

shall be decided by majority vote, except as otherwise expressly provided herein or in the By-Laws of the Association. The By-Laws of the Association shall be adopted by the Association and shall govern procedures and requirements for notice of meetings, quorums, voting and other matters of internal regulation. The Association shall adopt rules and regulations in the manner and to the extent authorized by its By-Laws.

The business of the Association shall be conducted by a Board of Managers of three persons and as set forth herein and in the By-Laws. The Board shall be elected annually from among the Members of the Association.

ARTICLE IV

COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, for each Lot within the Properties, all of which are owned by the Declarant on the date of recording of this Declaration, hereby covenants, and each subsequent owner except only the Association, by acceptance of a contract or deed therefor, whether or not it shall be so expressed in such contract or deed, is deemed to covenant, that each of said Lots except such Lots, or interests therein, as are owned by the Association, shall be and hereby is made subject to the assessments as provided herein for the use and benefit of the Association and its members; and the declarant and each subsequent owner do hereby covenant and agrees subject to the terms and conditions of this Declaration, to pay to the Association (1) annual assessments; (2) special assessments for capital improvements, and (3) the building maintenance assessment. Such assessments shall become and constitute a lien on such Lot as of January 1 following the date such assessment is established, as to annual and building maintenance assessments; or as of the first day of the first month following the date such assessment

together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal obligation of each owner of a Lot at the time the assessment became a lien. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used for the purposes set forth in the preamble, including but not limited to promotion of the health, safety and welfare of the residents in the Property and the general community, for the improvement and maintenance of the common facilities and common elements, and for the payment of taxes, utility charges and insurance premiums applicable to the Property, as the Board of Managers of the Association shall decide from time to time.

Section 3. ANNUAL ASSESSMENTS. Until December 31, 1981 the annual assessment for all members and their Lots shall be established by the Board of Managers of the Association at the initial meeting thereof.

(a) On and after January 1, 1982, the annual assessment may be increased or decreased each year by said Board of Directors, but shall not be increased more than 15% above the assessment for the previous year except upon approval of such action by majority vote of the entire membership of the Association.

(b) If the Board shall fail to establish an annual assessment for any year commencing on or after January 1, 1982, the annual assessment for such year shall remain the same as for the year immediately preceding; except that, upon approval by majority vote of the entire membership of the Association, such assessment may be increased or decreased as of the first day of any month.

Section 4. SPECIAL ASSESSMENTS. A special assessment for repair, reconstruction or replacement or additional capital improvements of the common facilities shall be made only upon resolution of the Association's Board of Managers, followed by the approval of two-thirds of the entire membership of the Association. Owners shall be assessed for capital expenditures (except for the common facilities therein) upon resolution of the Association's Board of Managers followed

by approval to two-thirds of the members.

Section 5. BUILDING MAINTENANCE ASSESSMENTS. Each owner of a Lot, in addition to the annual and special assessment shall be assessed annually, for exterior building maintenance of the townhouse and for the maintenance of the general common elements and for the insurance as provided in Article VII, Section 3. The Association shall segregate the funds received from the building maintenance assessments from the other funds of the Association. The limitations and conditions of assessment set forth in Section 4 with respect to the annual assessments shall also govern the building maintenance assessments.

Section 6. PAYMENT. The annual assessments and building maintenance assessments provided for herein, shall be due at the beginning of each 12-month period, commencing January 1 of each year (or commencing on the date of the initial meeting of the Board of Managers of the Association as to 1981) Annual and building maintenance assessments may be paid and collected in monthly installments pursuant to a plan adopted by the Board of Managers of the Association. Special assessments shall be due on the date they become a lien and shall be paid and collected in such installments with such dates of delinquency as may be provided in the resolution establishing same. The annual and building maintenance assessment against each Lot shall be made by resolution of the Board of Managers at least thirty (30) days in advance of each January 1; provided, however, such assessments for the Association's first fiscal year, ending December 31, 1981, shall be made on the date of the initial meeting thereof. Written notice of all assessments shall be furnished to every owner. 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 specified Lot have been paid, and such certificate shall be binding upon the Association with respect to any purchaser or encumbrancer relying thereon.

Section 7. EFFECT OF NONPAYMENT OF ASSESSMENTS.

Any assessment or monthly installment thereof not paid on or before thirty (30) days from the date due shall be delinquent and shall bear interest thereafter at the rate of 15 percent per annum until paid. The Association may bring an action to collect all delinquent assessments against the owner personally obligated to pay the same, or foreclose the assessment lien against such owner's Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common facilities or abandonment of his Lot. In addition to any other remedies herein or by law provided, the lien herein established may be foreclosed by an action in the court having jurisdiction over the Properties pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption.

Section 8. SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall be subordinate to the lien of any first purchase money mortgage. Sale or transfer of any Lot shall not release any such assessment lien. As used in this section, the term "mortgage" shall mean and include only a bona fide purchase money mortgage, purchase money deed of trust or contract for deed and the vendor's lien thereunder, but shall not include non-purchase money mortgages or deeds of trust or involuntary liens, such as mechanic's liens and judgment liens. Nothing herein shall be deemed to release any owner from his personal obligation, as described in Section 1 of this Article IV above, to pay assessments made hereunder.

ARTICLE V

GENERAL RESPONSIBILITIES AND RESTRICTIONS

Section 1. COX FACILITIES. The Association is herewith charged with the direct and continuing responsibility for maintenance, repair, replacement, operation, protection, extension and improvement of the common facilities, common elements of the townhouses and exterior maintenance of the townhouses.

Section 2. TOWNHOUSE PARTY WALLS. (a) Each wall which is built as a part of the original construction of the townhouses upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such other owner's successors in title.

Section 3. ARCHITECTURAL CONTROL. No building,

fence, wall or other structure shall be commenced, erected or maintained upon the Property nor shall any exterior addition, change, decoration, alteration or application of paint, stain or other exterior finish therein or thereto be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Managers of the Association. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after the plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The Board of Managers shall determine the frequency and necessity of exterior building maintenance to the townhouses which maintenance shall be paid from the funds of the Association generated by the building maintenance assessments provided for in Section 6, ARTICLE V.

Section 4. DECLARANT USE. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant, to maintain during the period of construction and sale upon such portion of the Property as Declarant deems may be reasonably required, convenient or incidental to said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 5. USE RESTRICTIONS. These restrictions shall apply to all owners of Lots.

- (a) No planting or gardening shall be done, and no fences, hedges, walls or other improvements or structures shall be erected or maintained in or upon the common facilities except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Managers. Except for the right of ingress and egress, the owners are hereby prohibited and restricted from using any of the Property outside the exterior boundary lines of their respective Lots, except as may be allowed by the Association's Board of Managers and this Declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners and is necessary for their protection.
- (b) With the exception of exterior maintenance of the townhouses, maintenance, upkeep and repairs of any residence or other improvements on each Lot shall be the sole responsibility of the individual owner thereof and not of the Association; however, any cooperative action appropriate to the proper maintenance, utilization, beautification or upkeep of said residences and improvements may be taken and assessments therefor may be made by the Board of Managers, at the discretion thereof. All utilities, fixtures and equipment installed within a residence on any Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the building, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect the other residences or their owners.

(c) In the event an owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Managers, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right through its agents and employees, to enter upon the Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. Prior to entry upon the Lot, the Association shall give the owner three (3) days notice of the intended action.

(d) Without prior written approval and authorization of the Board of Managers, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the property, nor upon any structure situated thereon other than a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

(e) Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the Property. The Association shall have the right to enter upon said lands and remove such refuse piles or other unsightly objects or materials at the expense of the owner responsible therefor, and such entry shall not be deemed a trespass provided three (3) days prior notice has been given to the owner and failure of owner to remove same.

(f) No commercial type vehicles and no trucks shall be parked on the Property except while engaged in transport. For the purposes of this covenant, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck. No recreational vehicles, boats, trailers, camper, house trailers or other similar vehicle shall be parked overnight or stored on the Property.

(g) No free-standing mailbox shall be erected unless approved by the Board of Managers.

(h) No Lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be disposed of in a sanitary manner, pursuant to rules and regulations adopted by the Association.

(i) The Board of Managers is authorized to adopt rules and regulations relating to the parking of vehicles on the common facilities. Such rules shall assure the utilization of parking spaces by all owners in a fair and equitable manner and shall prohibit the use of parking areas for storage of motor vehicles, boats, trailers, campers, house trailers or any other object, vehicle or equipment, except in designated parking areas.

Section 6. EASEMENTS. Each Lot and the common facilities shall be subject to an easement for encroachments created by construction, settling and overhangs, and for utilities and utility services, as designed or constructed by the Declarant, and for the maintenance of same.

Section 7. ENFORCEMENT OF COVENANTS. The Association is herewith vested with authority by Declarant and is assigned the rights of Declarant to enforce, to the same extent as Declarant might, any and all covenants running with the Property including but not limited to all covenants contained herein, or in protective covenants recorded against the Property, if any; provided that the authority and rights herein granted and assigned shall not preclude Declarant from proceeding to enforce any or all of said covenants, whether or not the Association is acting in that regard.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

Section 1. INSURANCE. The Association shall maintain at all times insurance policies for casualty, liability and other coverages in such amounts as the Board of Managers deems necessary.

Section 2. **INDEMNIFICATION. Each officer and**

director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement thereof, whether or not he is an officer or director of the Association at the time such expenses are incurred, except in such cases wherein such officer or director is adjudged guilty of willful malfeasance in the performance of his duties.

Section 3. **INSURANCE ON TOWNHOUSES. The Association**

shall maintain casualty, liability and other insurance on the townhouses which insurance shall name as insured the Association and the owners of the Lots. The premiums for such insurance shall be paid from the Association's fund derived from the building maintenance assessment.

The Association shall obtain an independent appraisal of the Mahogany Vistas Townhouses every three years to assure that adequate coverage is maintained. Certificates of insurance coverage or copies of insurance policies shall be issued to each owner and each mortgagee who makes written request to the Association for any such certificate or copy of an insurance policy.

Each owner shall be responsible for obtaining insurance he deems desirable, including, casualty insurance covering furnishings and personal property belonging to that Owner and insurance covering personal liability of that owner and his employees and guests.

Section 4. **APPLICATION OF INSURANCE PROCEEDS.**

Except as some particular person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association: first, as expressly provided elsewhere in this Declaration; second, to each of

the owners and their first mortgagees jointly in equal proportions or persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to the owners in equal proportions.

ARTICLE VII

GENERAL PROVISIONS

Section 1. ENFORCEMENT. The Association, or any owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, servitudes, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce and provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SERVERABILITY. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. AMENDMENT. The covenants, conditions and restrictions in this Declaration shall run with the land and be binding upon all Owners for a term of ten years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years each; provided, however, that the owners of three-fourths of the Lots in the Property subject hereto may amend, modify or terminate any portion of this Declaration, effective as of the end of any such ten-year period, by executing and acknowledging an appropriate agreement in writing for such purpose and recording same in the Office of the County Clerk and Recorder of Garfield County, Colorado, at least six months prior to the expiration of such ten-year period.

Section 4. REGISTRATION BY OWNER OF MAILING ADDRESS.

Each owner shall register his mailing address with the Association, and all notices, statements or demands intended to be served upon an owner shall be deemed delivered when deposited in the United States mail, postage prepaid, addressed in the name of the owner to such registered mailing address.

IN WITNESS WHEREOF, Declarant has caused its name and seal to be hereunto signed and affixed by its duly authorized officers this 25th day of July 1982.

Declarant

CARMACKON PARTNERSHIP

Betty J. Carmack
Robert J. Carmack

Betty J. Carmack
Betty J. Carmack

Carroll G. Wilson
Carroll G. Wilson

Betsy Wilson
Betsy Wilson

STATE OF COLORADO)
)
COUNTY OF GARFIELD) ss.

The foregoing instrument was acknowledged to before me this 25th day of July, 1982 by Robert J. Carmack Betty J. Carmack, Carroll G. Wilson, and Betsy Wilson, Declarant.

Witness my hand and official seal.

My commission expires: January 6 - 1986



Robert J. Carmack
Notary Public