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Noted for record of the State of Colorado, A. D. 1971, on 11/14/71, at 11:00 AM. *Richard B. Smith*, Secretary
 Record No. 287395

CONDOMINIUM DECLARATION

FOR

SAN MORITZ CONDOMINIUMS

This Condominium Declaration, made this 8th day of November, 1971, at Grandison County, Colorado, by J A B C O DEVELOPERS, INC., a Kansas Corporation, Declarant.

WHEREAS, J A B C O DEVELOPERS, INC., hereafter termed "Declarant", is the owner of real property in the County of Grandison, State of Colorado, described in Attached Exhibit "A" and which by this reference is made a part hereof; and,

WHEREAS, Declarant desires to establish condominium property under the Condominium Ownership Act of the State of Colorado; and,

WHEREAS, Declarant has executed plans for the construction of a building which will consist of twenty-four units, together with future buildings and improvements; and,

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of real property estates, consisting of the area or space contained in each of the units in the building improvements and the co-ownership by the individuals and separate owners thereof, as tenants in common, of all of the remaining property, which property is hereafter defined and referred to as general common elements.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be binding and accrue to Declarant, its heirs, executors, and administrators and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Definitions: The following definitions shall apply unless the context shall expressly provide otherwise:

(a) "UNIT" means an individual air space unit which is contained within the perimeter walls, floors, ceilings, windows and doors of such unit, as shown on the Condominium Map, together with all fixtures and improvements therein contained, but not including any of the structural components of the building in which the unit is located.

(b) "CONDOMINIUM UNIT" means a unit, together with an undivided interest in the general and limited common elements appurtenant thereto.

(c) "OWNER" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns a condominium unit.

(d) "GENERAL COMMON ELEMENTS" means and includes:

(1) The land on which the building is located.

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(2) The foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, patios, sidewalks and driveways of the building.

(3) The yards, gardens and automobile parking areas.

(4) Any installations consisting of equipment and materials making up any central utility services.

(5) In general, all apparatus and installations existing for common use.

(6) All other parts of the property and improvements necessary or convenient to its existence, maintenance and safety, or normally in common use.

(e) "LIMITED COMMON ELEMENTS" means those parts of the general common elements which are reserved for the exclusive use of the owner(s) of a condominium unit.

(f) "ENTIRE PREMISES" or "PROPERTY" means and includes the land, buildings, all improvements and structures thereon, all owned in fee simple absolute, and all rights, easements and appurtenances belonging thereto.

(g) "COMMON EXPENSES" means and includes:

(1) Expenses declared common expenses by provisions of this Declaration and the bylaws.

(2) Expenses of administration, operation and management, maintenance, repair or replacement of the general common elements;

(3) All sums lawfully assessed against the general common elements by the Board of Directors; and,

(4) Expenses unanimously agreed upon as common expenses by the owners.

(h) "ASSOCIATION" means a Colorado non-profit corporation, its successors and assigns, the Articles of Incorporation and bylaws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.

(i) "BUILDING" means one of the building improvements comprising a part of the property.

(j) "MAP" means and includes the engineering survey of the land locating thereon all of the improvements, the floor and elevation plans and any other drawings or diagrammatic plan depicting a part of or all of the improvements.

3. Condominium Map: The Map shall be filed for record prior to the first conveyance of any condominium unit. Such Map shall consist of and set forth the following:

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- (a) The legal description of the surface of each land;
- (b) The linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all other improvements built or to be built on said land by Declarant;
- (c) The elevation plans of the buildings;
- (d) The elevations of the unfinished interior surfaces of the floors and ceilings as established on a datum plane, the linear measurements showing the thickness of the perimeter walls of the buildings; the bearing walls of the buildings and the perimeter walls of each unit; and,
- (e) The floor plans which shall depict the boundaries (perimeter) of the condominium units, the unit designations and the linear measurements of each unit.

As a part of the Map, there shall be filed for record a certificate of a licensed architect or registered professional engineer of the State of Colorado certifying that the improvements as constructed conform substantially to the Map, and that the Map fully and accurately depicts the layout, measurements and location of all of the improvements on the land; the condominium unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings.

In interpreting the Condominium Map or any part thereof, the existing physical boundaries of the separate units shall be conclusively presumed to be its boundaries.

Additional maps enlarging the condominium project may be filed for record as provided in paragraph 32.

4. Division of Property into Condominium Units: The real property on attached exhibit "A" is hereby divided into the following fee simple estates:

(a) Twenty-four fee simple estates consisting of twenty-four separately designated condominium units. Each unit shall be identified on the Map by number and by building letter.

(b) The remaining portion of the entire premises shall be held in fee simple, in common by the owners, which premises are referred to as the general common elements, and are described on attached exhibit "B", which is made a part hereof by reference.

5. Limited Common Elements: A portion of the general common elements is reserved for the exclusive use of the owners of the respective units, and such areas are referred to as "limited common elements". The limited common elements so reserved are the balconies. The balconies adjoining and associated with a unit as shown on the Map shall be used in connection therewith to the exclusion of the use thereof by the other owners of the general common elements, except by invitation.

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6. Inseparability of a Condominium Unit: Each unit and the undivided interest in the general and limited common elements and the easements appurtenant thereto shall together comprise one unit which shall be inseparable and may be conveyed, leased, devised or encumbered only as a unit.

7. Description of Condominium Unit: Every legal instrument may legally describe a condominium unit by its identifying unit number and building name, followed by the words, "San Moritz Condominiums", with reference to the Map and Declaration. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect not only the unit, but also the general common elements, the limited common elements and easements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from each unit, for use of the general common elements together with the right to the exclusive use of the limited common elements.

8. Separate Assessments and Taxation - Notice to Assessor: Declarant shall give written notice to the Assessor of the County of Gunnison, Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each unit and the undivided interest in the general common elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation.

9. Titles: A unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

10. Non-partitionability of General Common Elements: The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition or any unit between the owners thereof, but such partition shall not affect any other unit.

11. Use of General and Limited Common Elements: Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

12. Use and Occupancy: Each unit shall be used and occupied solely for residential purposes by the owner, by the owner's family, guests, invitees and tenants, subject, however, to the provisions contained in paragraph 15 of this Declaration.

13. Easements for Encroachments: If any portion of the general common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the general common elements, or upon an adjoining unit or units, a valid easement for the encroachment does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general elements or the units.

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14. Termination of Mechanic's Lien Rights and Indemnification: Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the unit of any other unit owner not expressly consenting to or requesting the same, or against the general common elements. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request. The provisions herein contained are subject to the rights of the Managing Agent or the Board of Directors of the Association, as is set forth in paragraph 16.

15. Administration and Management: The administration and management of this condominium property shall be governed by the Articles of Incorporation and the Bylaws of San Moritz Condominium Association, a Colorado non-profit corporation, hereafter referred to as the "Association". An owner of a unit, upon becoming such an owner, shall be a member of the Association and shall remain a member for the period of his ownership.

16. Reservation for Access - Maintenance, Repair and Emergencies: The owner shall have the irrevocable right, to be exercised by the Managing Agent or the Board of Directors of the Association, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit or units.

Damage to the interior or any part of a unit or units resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of an emergency repair within another unit at the instance of the Association shall be at a common expense of all of the owners; provided, however, that if such damages is the result of the negligence of a unit owner, then such unit owner shall be responsible for all of such damages. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

17. Owners' Maintenance Responsibility of Unit: For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the interior non-supporting walls, materials such as but not limited to plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring, making up the finished surfaces of the perimeter walls, ceilings and floors within the unit and the unit doors and windows. The owner shall not be deemed to own any utilities running through his unit which serve one or more other units except as tenants in common with the other owners. Such right to repair, alter and remodel shall carry the obligation to replace any finished materials removed with similar or other types or kinds of finishing materials.

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An owner shall maintain and keep in repair the interior of his own unit, including the fixtures thereof. All fixtures and equipment installed within the unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the unit shall be maintained and kept in repair by the owner thereof.

An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

18. Compliance with Provisions of Declaration, Bylaws of the Association: Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto and as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

19. Revocation or Amendment of Declaration: This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of seventy-five per cent, or more, of the general common elements, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all units unanimsously consent and agree to such revocation or amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.

20. Assessment for Common Expenses: All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the common expenses. The assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements, except for hazard insurance premiums. Assessments for insurance premiums shall be based upon that proportion of the total premiums that the insurance carried on a unit bears to total coverage. The limited common elements shall be maintained as general common elements, and owners having exclusive use thereof shall not be subject to any special charges or assessments therefor. Assessments for the estimated common expenses, including insurance shall be due monthly in advance on the first day of each month. The Managing Agent or Board of Directors shall prepare and deliver or mail to each owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments are made.

The assessments made for common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Board of Directors of the Association shall from time to time determine is to be paid by all of the condominium owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, expenses of management, taxes and special assessments, until separately assessed; premiums for fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached

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issued in the amount of the maximum replacement value of all of the units (including all fixtures, interior walls and partitions, decorated and finished surfaces, of perimeter walls, floors and ceilings, doors, windows and other elements or materials comprising a part of the units) casualty and public liability and other insurance premiums, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash collection, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration, for any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the general common elements. The omission or failure of the Board of Directors to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from their obligation to pay.

31. Insurance: The Managing Agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided herein and including for each other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction, design and use insured by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in a blanket policy form naming the Association the insured as attorney-in-fact for the unit owners, which policy or policies shall identify the interest of each unit owner (owner's name, unit number, building name or designation, the appurtenant undivided interest in the general common elements) and which policy or policies shall provide a standard non-contributory mortgagee clause in favor of each first mortgagee, and that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice is first given to each owner and each first mortgagee. The Managing Agent or Board of Directors shall furnish a certified copy of such blanket policy and the certificate identifying the interest of the mortgagee. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy as to the interests of all other insured owners not guilty of such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Insurance coverage on the furnishings or other items of personal property belonging to an owner and casualty and public liability insurance within each individual unit shall be the responsibility of the owner thereof.

A determination of the maximum replacement value of all condominium units for insurance purposes shall be made biennially by one or more written appraisals for insurance purposes, copies of which shall be furnished immediately to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisals.

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22. Lien for Non-payment of Common Expenses: All sums assessed but unpaid for the share of common expenses chargeable to any unit shall constitute a lien on such unit superior to all other liens or encumbrances, except only for:

(a) Tax and special assessment in favor of any assessing unit, and.

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance.

To evidence such lien, the Board of Directors or Managing Agent shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the unit and a description of the unit. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the records of Gunnison County, Colorado. Such a lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's unit by the Association in like manner as a mortgage on real property upon the recording of a notice of claim thereof. In any such foreclosure, the owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorneys' fees. The owner shall also be required to pay to the Association the monthly assessment for the unit during the period of foreclosure, and the Association shall be entitled to a Receiver to collect the same. The Association shall have the power to bid in the unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Any encumbrancer holding a lien on a unit may pay, but shall not be required to pay, any unpaid common expenses payable with respect to such unit, and upon such payment said encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

23. Owners' Obligation for Payment of Assessments: The amount of the common expenses assessed against each unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

24. Liability for Common Expenses upon Transfer of Condominium Unit is Joint: Upon payment of a reasonable fee, not to exceed fifteen dollars, and upon the written request of any owner or any mortgagee or prospective mortgagee of a unit, the Association, by its Managing Agent or the Board of Directors of the Association, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessments become due, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

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The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee theretofore; provided, however, that upon payment of a reasonable fee not to exceed fifteen dollars, and upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors setting forth the amount of unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessments, the date that such assessments become due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. Unless such request for a statement shall be complied with within ten days of such request, then such requesting grantee shall not be liable for, nor shall the unit be conveyed subject to a lien for any unpaid assessments against the subject unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the unit by the Declarant.

24. Mortgaging a Unit - Priority: Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a unit may create junior mortgages on the following conditions: (1) that any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this Declaration, the Articles of Incorporation and the Bylaws of the Association; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Board of Directors of the Association.

25. Right of First Refusal by Owners: In the event any owner of a unit other than the Declarant shall wish to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining unit owners shall be given written notice thereof, together with an executed copy of such offer and the terms thereof. The right of first refusal herein provided shall not apply to leases or subleases having a term of one year or less. Such notice and copy shall be delivered to the Board of Directors for all of the owners. The remaining unit owners through the Board of Directors, or a person named by them, shall have the right to purchase or lease the subject unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the twenty-day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner other than the Declarant shall attempt to sell or lease his unit without affording to the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

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The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under and by the provisions contained in this Declaration shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his unit to a trust deed, mortgage or other security instrument.

The failure of or refusal by the owners to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The right of first refusal as provided herein, shall extend to and run for a period of fifty years from the date of filing this Declaration in the records of Gunnison County, Colorado.

Except as is otherwise provided in paragraph 27, and except upon a transfer of title to a Public Trustee or a first mortgagee, each and every conveyance by a grantor of a unit shall be, for all purposes, deemed to include and incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal", as provided in this paragraph.

27. Exemption from Right of First Refusal: In the event of any default on the part of any owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 26, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall be thereupon and thereafter subject to the provisions of this Declaration, and the Articles of Incorporation and Bylaws of the Association. If the purchaser following such foreclosure sale (or the grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of paragraph 26, but if the grantee shall thereupon and thereafter be subject to all of the provisions hereof.

The following transfers are also exempt from the provisions of paragraph 26:

(a) The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s).

(b) The transfer of a deceased's interest to a devisee by will or his heirs at law under the laws of descent and distribution of the State of Colorado.

(c) The transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners. A transfer of all or part of a partner's or partners' interests between one or more partners and/or to persons becoming partners.

(d) The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as a result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided,

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however, that at least fifty per cent of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the unit.

Such persons, owners or grantees acquiring an interest shall be subject to all of the provisions of paragraph 26, except as is herein provided.

25. Certificate of Compliance - Right of First Refusal: Upon written request of any prospective transferee, purchaser, tenant or an existing or prospective mortgagee of any unit, the Managing Agent or Board of Directors of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(A) With respect to a proposed lease or sale under paragraph 26, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;

(B) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, a deed from such first mortgagee or its nominee, pursuant to paragraph 27; that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 26.

(C) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer will not be subject to the provisions of paragraph 26.

Such a certificate shall be conclusive evidence of the facts contained therein.

26. Association as Attorney-in-fact: This declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Sea Horitz Condominium Association, a Colorado non-profit corporation, their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction

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and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty per cent of all of the units, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of the insurance and the proceeds of an assessment to be made against all of the owners and their units. Such deficiency assessment shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt to each owner and a lien on his unit and may be enforced and collected as is provided in paragraph 22. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

- (1) For payment of the balance of the lien of any first mortgage;
- (2) For payment of taxes and special assessment liens in favor of any assessing entity;
- (3) For payment of unpaid common expense;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and,
- (5) The balance remaining, if any, shall be paid to the unit owner.

(c) If more than fifty percent of all of the units, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of seventy-five percent or more, of the general common elements, do not voluntarily, within one hundred days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth the fact or facts, and upon the recording of such notice by the Association's president and secretary, the remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the Articles of Incorporation and Bylaws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts.

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each such accounts representing one of the units. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the unit represented by such separate account. Thereafter, each such account shall be supplemented by the appropriate amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

If the owners representing an aggregate ownership interest of seventy-five percent or more, of the general common elements adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his unit and may be enforced and collected as is provided in paragraph 22. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in paragraph (b)(1) through (5) of this paragraph.

(d) The owners representing an aggregate ownership interest of seventy-five per cent or more, of the general common elements may agree that the units are obsolete and adopt a plan for the renewal and reconstruction, which plan has the unanimous approval of all first mortgagees. If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the owners as common expenses, provided, however, that an owner not a party to such a plan for renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair and reasonable market value thereof. The Association shall then have fifteen days within which to cancel such plan. If such plan is not cancelled then the unit shall be purchased according to the following procedure. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencing date, each party shall nominate in

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writing and give notice of such nomination to the other party, an appraiser who shall be a licensed real estate broker in Gunnison County, Colorado. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another appraiser to be a licensed real estate broker in Gunnison County, Colorado. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser to be a licensed real estate broker in Gunnison County, Colorado, to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously nominated shall nominate two persons, each of whom shall be a licensed real estate broker in Gunnison County, Colorado, and from the names of the four persons so nominated, one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominees from whom the umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owner. The sale shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as provided in subparagraph (b)(1) through (5) of this paragraph.

In the event that there are not sufficient licensed real estate brokers in Gunnison County, Colorado to provide the necessary appraisers and nominees herein set forth, then licensed real estate agents of the State of Colorado residing in Gunnison County, Colorado may be used.

(c) The owners representing an aggregate ownership interest of twenty-five per cent or more, of the general common elements may agree that the units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the Articles of Incorporation and the Bylaws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into two separate accounts, each such account representing one unit. Each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total of such accounts, without contribution from one account to the other, for the same purposes and in the same order as provided in subparagraph (b)(1) through (5) of this paragraph.

30. Personal Property for Common Use: The Association may acquire and hold for the use and benefit of all of the condominium owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the unit owners in the same proportion as their respective interests in the general common elements and shall not be transferable except with a transfer of a unit. A transfer of a unit shall transfer to the transferee membership of the transferor's beneficial interest in such property without any reference thereto. Each owner may

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use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed condominium unit.

34. Registration by Owner of Mailing Address:
Each owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either registered or certified mail postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to P.O. Box 179, Gunnison, Colorado, until such address is changed by a notice of address change duly recorded in the records of Gunnison County, Colorado.

35. Reservation to Enlarge Condominium Project:
(a) Declarant expressly reserved the right to enlarge this condominium project by constructing additional condominium buildings and other improvements on all or a part of the property set forth on Exhibit "C" of this Declaration, and on other property submitted to this Declaration. Such additions shall be set forth in a supplement to the Declaration and Map duly recorded in the records of Gunnison County, Colorado.

(b) In form and substance, the addition to the Declaration shall provide for a division of such additional real property and improvements into units similar to the division made of the real property and improvements in the Declaration. Each unit shall be identified by number and letter and each building shall be identified by name or designation dissimilar to any other building under this Declaration and the Map. The undivided interest in and to the general common elements appurtenant to each such unit shall not be a part of the general common elements of the units described and initially created by this Declaration and the Map. The undivided interest in the general common elements shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in a duly recorded Amendment to this Declaration.

(c) Except as is provided in paragraphs 3 and 4 of this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional units. Common expenses of such additional units shall be separately assessed and all insurance policies shall cover only such additional units.

(d) Paragraph 29 of this Declaration relates to destruction and obsolescence. Only the owners of the units affected shall be entitled to vote under the provisions of said paragraph 29. The units initially constructed and the additional units to be constructed shall be a part of the whole project, provided, however, that each building so constructed shall be a separate condominium project for the purpose of said paragraph 29 and the unit owners in said building shall comprise one hundred per cent of the total interest for voting purposes.

(e) Except as provided in subparagraph (d) of this paragraph, each unit owner shall be entitled to vote his percentage of fractional interest in and to the general common elements, and the aggregate of all of the undivided interests submitted to and making up the total condominium project shall be considered one hundred per cent for such voting purposes.

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33. General: (a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstances be invalidated, such invalidity shall not effect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

(b) The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado, and to all other provisions of the law.

(c) That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders

IN WITNESS WHEREOF, Declarant has executed this Declaration this 8th day of November 1971.

J A B C O DEVELOPERS, INC.

by *[Signature]*
President



[Signature]
Secretary

KANSAS
STATE OF KANSAS)
Johnson)
County of Johnson)
1971

The above and foregoing Condominium Declaration was acknowledged before me this 8th day of November 1971, by James J. Ryan, as president and David E. Gambrell, as secretary of J A B C O Developers, Inc.

My commission expires: My Commission Expires 10/15/74

Witness my hand and official seal.

[Signature]
Notary Public



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EXHIBIT "A"
 TO
 CONDOMINIUM DECLARATION
 FOR
 SAN MORITZ CONDOMINIUMS

A tract of land located in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), Section Twenty-six (26), Township Thirteen (13) South, Range Eighty-six (86) West of the 6th Principal Meridian, Gunnison County, Colorado, described as follows:

Commencing at a point from whence the East Quarter corner (brass capped) of said Section 26 bears North 72°05.9' East 915.6 feet, said commencing point being marked by a 1/2 inch reinforcing bar with a blue plastic cap marked, "L.6. 9x76"; thence from said commencing point South 18°07' West 78.4 feet to the point of beginning; thence continuing around the tract South 18°07' West 188.4 feet, more or less to the northerly boundary of a tract described in Book 379, at page 333 of the records of Gunnison County, Colorado; thence North 71°25' West along said northerly boundary 250.0 feet more or less to the Easterly boundary of Hunter Hill Road according to the Replat of Chalet Village Addition No. 3; thence North 1°55' East along said boundary 302.8 feet more or less to Boundary Point 17 of said Replat of the Chalet Village Addition No. 3; thence continuing along said road boundary along the arc of a curve to the left having a radius of 138.0 feet a distance of 145.6 feet more or less to a point which is North 56°42' West of the commencing point; thence South 56°42' East 188.0 feet more or less, to a point which is North 56°42' West, 65.0 feet from the commencing point; thence South 33°18' West 73.0 feet; thence South 56°42' East 81.8 feet to the point of beginning, containing 2.0 acres, more or less.

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EXHIBIT "B"TOCONDOMINIUM DECLARATIONFORSAN MORITO CONDOMINIUMS

<u>Unit Number</u>	<u>Building</u>	<u>Apartment Undivided Interest (Fractional)</u>
101	Keystone	One-twenty-fourth (1/24)
102	Keystone	One-twenty-fourth (1/24)
103	Keystone	One-twenty-fourth (1/24)
104	Keystone	One-twenty-fourth (1/24)
201	Keystone	One-twenty-fourth (1/24)
202	Keystone	One-twenty-fourth (1/24)
203	Keystone	One-twenty-fourth (1/24)
204	Keystone	One-twenty-fourth (1/24)
301	Keystone	One-twenty-fourth (1/24)
302	Keystone	One-twenty-fourth (1/24)
303	Keystone	One-twenty-fourth (1/24)
304	Keystone	One-twenty-fourth (1/24)
101	Jokerville	One-twenty-fourth (1/24)
102	Jokerville	One-twenty-fourth (1/24)
103	Jokerville	One-twenty-fourth (1/24)
104	Jokerville	One-twenty-fourth (1/24)
201	Jokerville	One-twenty-fourth (1/24)
202	Jokerville	One-twenty-fourth (1/24)
203	Jokerville	One-twenty-fourth (1/24)
204	Jokerville	One-twenty-fourth (1/24)
301	Jokerville	One-twenty-fourth (1/24)
302	Jokerville	One-twenty-fourth (1/24)
303	Jokerville	One-twenty-fourth (1/24)
304	Jokerville	One-twenty-fourth (1/24)

EXHIBIT "C"

BOOK 437 PAGE 159

TOCONDOMINIUM DECLARATION

for

SAGE HORNET CONDOMINIUMS

A tract of land located in the North half of the Southeast quarter (NESE $\frac{1}{4}$) Section Twenty-six (26), Township Thirteen (13 $\frac{1}{2}$ South, Range Eighty-six (86) West, 6th Principal Meridian, Gunnison County, Colorado, and more particularly described as follows:

Beginning at Corner No. 1 from whence the East quarter corner of said Section 26 bears North 72°31'13" East 942.65 feet; thence South 56°47'32" East 1110.83 feet to the East section line of said Section 26, being Corner No. 2; thence along said section line South 2°14' East 436.86 feet, more or less, to Corner No. 3, which is the South 1/16th Corner between Sections 26 and 27 said Township and Range; thence along the South 1/16th line of Section 26, South 89°43'47" West 1345.00 feet to Corner No. 4; thence North 12°55'45" West 228.45 feet to Corner No. 5; thence North 37°25'00" East, 634.00 feet to Corner No. 6; thence 124.31 feet along the arc of a curve to the right having a radius of 100.00 feet and a chord which bears North 73°00' East 116.33 feet to Corner No. 7; thence North 71°23' West 140.00 feet to Corner No. 8; thence North 16°06'57" East 264.203 feet to Corner No. 1, the place of beginning, containing 21.26 acres, more or less.