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Recorder
358463
By: Joanne M. Reiting RECORDER

CONDOMINIUM DECLARATION
FOR
WEST ELK TOWNHOUSES
(A Condominium)

I, Virginia Hamilton, Clerk in and for the Town of Mt. Crested Butte, State of Colorado do hereby certify that this document has been reviewed and approved by the Mt. Crested Butte Town Council.
Dated this 27th day of April, 1981.
By: Virginia Hamilton

KNOW ALL MEN BY THESE PRESENTS,

WHEREAS, J. R. Young, hereafter the "Declarant", is the owner of the following described real property, hereinafter "the premises", situated in the County of Gunnison, State of Colorado:

Lot Twenty-Two (22), Chalet Village Addition
No. 3, Town of Mt. Crested Butte,
County of Gunnison and State of Colorado.

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

WHEREAS, Declarant owns buildings and other improvements appurtenant thereto on the above described property which, when completed, shall consist of separately designated Condominium Units; 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 buildings, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all the remaining real property hereinafter defined and referred to as the 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 a burden and a benefit to Declarant, their heirs, representatives, successors and assigns 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. Unless the context shall expressly provide otherwise, the following definitions shall apply:

(a) "Apartment," "Apartment Unit," or "Unit" means an individual air space which is contained within the unfinished interior surfaces of the perimeter walls, floors, windows, ceilings and doors of a unit in the building as shown on the map to be filed for record, together with all fixtures and improvements therein contained but not including any of the structural components of the building, if any, within a unit.

(b) "Association of Unit Owners," or "Association" means a non-profit or not for profit corporation hereafter duly organized and incorporated, the Certificate and Bylaws of which shall govern the administration of this Condominium

property, and the members of which shall be all of the owners of the condominium property. Upon and after the formation as aforesaid of such association, each subsequent owner or transferee owner of a condominium unit shall be a member of the Association and shall remain a member for the period of his ownership. Such Association shall be formed by the incorporation thereof by the owners of a majority of the condominium units in the project, and the Declarant, if Declarant still retains ownership of any condominium unit or units of which this condominium property is composed, otherwise by the owners of a majority of the Condominium Units in said property. An exclusive or managing agent may be appointed by the Association from time to time for the operation and management of the condominium property.

(c) "Building" means the building improvement comprising a part of the property.

(d) "Common Elements" means and includes:

- (1) The land on which the buildings are located;
- (2) The foundations, columns, girders, beams, supports, main walls, roofs, patios, halls, corridors, lobbies, stairs, stairways, courtyards, and entrances and exits of the building, and the portions of the basement which are not designated as units;
- (3) The yards, gardens, exterior and underground parking areas, and storage spaces;
- (4) The installations consisting of equipment and materials making up central services such as tanks, pumps, motors, fans, compressors, ducts, power, pipes, light, gas, hot and cold water, heating, ventilating and air conditioning; any portion of the building designated for the lodging of custodians or persons in charge of the property of the building and, in general, all apparatus and installations existing for common use;
- (5) Such partly or entirely closed air spaces as are provided for community or common use;
- (6) The sauna, whirlpool and other similar recreation facilities;
- (7) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use; provided, however, that nothing herein shall be deemed to preclude Declarant from designating conference facilities as a unit to be privately owned like any other unit.

(e) "Common Expenses" means and includes:

- (1) All sums lawfully assessed against the General Common Elements;
- (2) Expenses of administration and management, maintenance, repair or replacement of the General Common Elements; including, without limitation, removal of snow from the roof of the project, which shall be accomplished by the Association on a regular basis, before the accumulation of substantial snow thereon;
- (3) Expenses declared common expenses by the unit owners.

(f) "Condominium Unit" means a unit together with the undivided interest in the Common Elements appurtenant to such unit.

(g) "Entire Premises", "Premises", "Project or Property" means and includes the land, the building, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(h) "General Common Elements" means those parts of the Common Elements which are not designated as "Limited Common Elements" on the map.

(i) "Limited Common Elements" means those parts of the Common Elements reserved for the exclusive use of the owners of less than all of the Condominium Units in the building.

(j) "Majority of Owners" means those Owners holding a majority of the votes in accordance with the percentages assigned in Paragraph 3 of this Declaration.

(k) "Managing Agent," as used herein, shall mean a managing agent which may hereafter be appointed by the Board of Directors of an association of unit owners which may hereafter be formed. The title "Managing Agent" shall also refer to the person, firm or entity which shall be selected and appointed by the owners of a majority of the condominium units in accordance with the provisions of Section 14 of this Declaration. Whenever there shall be no association capable of performing the functions to be performed by an association herein, such managing agent, if so appointed, shall also be authorized to perform any function, duty or responsibility which would otherwise be performed by such association, its officers, directors and agents hereunder.

(l) "Map" or "Plan" means and includes the engineering survey of the land located thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements.

(m) "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium Unit or any part thereof is encumbered.

(n) "Mortgagee" means any person named as the mortgagee or the beneficiary under any mortgage under which the interest of any owner is encumbered.

(o) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning one or more condominium units; the term "Owner" shall not refer to any mortgagee, as herein defined, unless such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(p) "Time Sharing" means the creation of interests in a unit consisting of either "interval estates" or "time-span estates", as defined in Paragraph 30 of this Declaration.

2. Condominium Map. Prior to the first conveyance of a condominium unit, Declarant shall cause to be filed for record a map. The map shall depict and show at least the following: The legal structural components or supporting elements of the building; the thickness of the common walls

between units and the unit numbers or other designation. The map shall contain the dual certificate of a registered engineer certifying that the map substantially depicts the layout, measurements and location of the building, the units, the unit designations, the dimensions of such units, the elevations of the unfinished floors and ceilings as constructed and that the map was prepared subsequent to substantial completion of the improvements depicted.

In interpreting the Condominium Map the existing physical boundaries of each unit as constructed shall be conclusively presumed to be its boundaries.

Declarant reserves the right to amend the map from time to time, to conform same to the actual physical location of the constructed improvements and to any changes, modifications or alterations.

3. Division of Property into Condominium Units. The real property and improvements to be constructed as Phase I of the Project are hereby divided into six (6) separate fee simple estates, each such estate consisting of one unit together with an appurtenant undivided one-sixth (1/6) fractional interest in and to the Common Elements as tenants in common.

The Common Elements shall be held in common by the owners thereof. Each Condominium Unit is described on the map, which by this reference is made a part hereof. Each Condominium Unit shall be identified in the map by the number shown thereon.

4. Limited Common Elements. A portion of the Common Elements is set aside and reserved for the exclusive use of less than all of the owners, such areas being Limited Common Elements, as designated on the map.

5. Inseparability of a Unit. Each unit and the undivided interest in the General Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Condominium Unit.

6. Description of a Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit number, followed by the words, "West Elk Townhouses" with further reference to the recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit, but also the Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout the General Common Elements appurtenant thereto to the exclusion of all third parties not lawfully entitled to use the same.

7. Separate Assessment and Taxation-Notice to Assessor. Declarant shall give written notice to the assessor of Gunnison County, Colorado, of the creation of the condominium ownership of this property, as is provided by law, so that each condominium unit shall be deemed a separate parcel and subject to separate assessments and taxation.

8. Title. A condominium 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 Colorado.

9. Non-Partitionability of General Common Elements.

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

10. Use of General Common Elements. Each owner shall

be entitled to exclusive ownership and possession of his unit. Each owner may use the common elements in accordance with the provisions of this Declaration, without hindering or encroaching upon the lawful rights of the other owners.

11. Use and Occupancy. The units in the project shall

be used for residential purposes only. Time sharing as defined in Paragraph 30 of this Condominium Declaration and/or in Colorado Revised Statutes is hereby specifically authorized as to any or all units in the Project.

12. Easements for Encroachments. If any portion of

the common elements now or hereafter encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a unit now or hereafter encroaches upon the common elements or upon an adjoining unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the common elements or the units.

13. 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 owner thereof or his agent or his contractor or subcontractor shall be a basis for filing of a lien against the unit of any other owner not expressly consenting to or requesting the same, or against the General Common Elements owned by such other owners. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim or any lien against the unit of any owner or against the General Common Elements for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the owner's unit at such owner's request.

14. Administration and Management. The operation and

management of this condominium property shall be undertaken by the Declarant or, if Declarant conveys the entire undivided project to one other person, such Grantee of the Declarant, or if Declarant or its grantee fail to do so, by a managing agent appointed in the manner described herein unless and until the Association of unit owners shall have been duly organized and shall assume and carry out the responsibility therefor as hereinafter specified.

(a) The managing agent shall be a person, firm or corporation designated and appointed from time to time by the owners of a majority of the condominium units, who shall deliver the same to one or more owners of all other condominium units their written notice of appointment of said managing agent, which notice shall specify the powers, duties and responsibilities of said managing agent for the day to day operation of the project, and upon such appointment such

managing agent shall be and become the managing agent for, and shall have the power to bind all of the owners of all of the condominium units in the project with respect to matters within the scope of this Declaration, until such time as the authority of the managing agent shall be revoked, or a different managing agent shall be appointed by similar written notice signed by the owners of a majority of the condominium units in the project, and delivered to the said managing agent and one or more of the owners of all other condominium units.

(b) The authority and responsibility for the management of the project shall be vested in and exercised by a managing agent appointed pursuant to this Paragraph (14) until such time as an association of unit owners is duly organized as herein provided; the duly elected and organized officers thereof shall assume the responsibility of management and shall terminate the authority of the managing agent or shall appoint a new managing agent for the project, whereupon the authority of the owners of a majority of the condominium units to appoint a managing agent shall be suspended and superceded. Prior to the time the association of unit owners shall assume the full responsibility for management of the project, and at any time after the association of unit owners, having been duly formed, shall cease to be in good standing, or shall fail or refuse to assume the full responsibility for management of the project, then, in such event, the owners of a majority of the condominium units shall be and become reinvested with the power to appoint a managing agent as hereinabove specified. Such a managing agent appointed by the owners of the units (rather than be an association of unit owners) shall be invested with the rights, powers and authority which would be vested in or exercisable by the association of unit owners, the Board of Directors thereof, or any managing agent appointed thereby. The written notices of appointment of the managing agent by the owners of the units hereunder shall be placed of record by the manager insofar as required by law or practice. Until changed by the owners of a majority of the condominium units, the initial managing agent of the project shall be the Declarant or its grantee.

(c) Notwithstanding any provision to the contrary in these Declarations, so long as the Declarant retains ownership of 50% or more units, the Declarant shall have the right but shall not be compelled to be the managing agent of the project with full control over the management thereof.

15. Reservation for Access-Maintenance, Repair and Emergencies. The owners shall have the irrevocable right, to be exercised by the managing agent or Board of Directors of the association, to have access to each condominium unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another condominium unit or units, or for removing snow from the deck appurtenant to each unit.

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

16. Owners' Maintenance Responsibility of Unit. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the windows, doors, interior non-supporting walls, the material (such as, but not limited to plaster, gypsum drywall, paneling, wallpaper, brick, stone, paint, wall and floor tile, and flooring, but not including the subflooring) 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 more than one unit except as a tenant in common with the other owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials of equal or better quality.

An owner shall maintain and keep the interior of his own unit in good taste and repair, 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.

17. Compliance with Provisions of Declaration and Bylaws. Each owner shall comply strictly with the provisions of this Declaration, the provisions of the Certificate of Incorporation and Bylaws of the association, and the decisions and resolutions of the association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure so to comply 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.

18. Revocation or Amendment to Declaration. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners of a majority of the units, or more, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units consent and agree to such revocation or amendment by instrument(s) duly recorded; however, the fractional undivided interest in the General Common Elements appurtenant to each condominium unit, as defined and designated by this Declaration, shall have a permanent character and shall not be altered without the consent of all of the condominium unit owners as expressed in a duly recorded amendment to this Declaration, except as provided in Paragraph 26 of this Declaration.

19. Assessment for Common Expenses. Each owner shall be obligated to pay all charges for any separately metered utilities servicing his condominium unit. In the event that any utility is master metered to the Association, then each unit's share of such utility charges shall be based upon the percentage interest in the general common elements appurtenant to such unit.

All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the association or the managing agent to meet the common expenses. Except for insurance premiums, the assessments shall be made pro-rata according to each owner's fractional interest in and to the General Common Elements. Assessments for insurance

premiums shall be based upon that proportion of the total premiums that the insurance carried on a condominium unit bears to total coverage. Assessments for the estimated common expenses, including insurance, shall be due monthly, quarterly or semi-annually, at the option of the Board of Directors or managing agent, in advance on the first day of each month, quarter or half years, as the case may be. The managing agent or Board of Directors shall prepare and deliver or mail to each owner an itemized periodic statement showing the various estimated or actual expenses for which the assessments are made. Contribution for periodic assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a period.

The assessment made upon the owners by the association shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or Board of Directors of the association shall from time to time determine is to be paid by all of the condominium unit 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. Said sum may include, without limitation, the following: expenses of management; taxes and special assessments until separately assessed; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all condominium units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; and/or replacements for any common areas or personal property, garbage collections; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the managing agent or the Board of Directors under or by reason of this Declaration; snow removal from roof and other common areas; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund; the renting or purchase of living space for management or maintenance personnel; as well as other costs and expenses relating to the General Common Elements. The omission or failure of the Board to fix or bill the assessment for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay.

20. Insurance. The managing agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other buildings, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the association or, if none, the managing agent, as the insured, as the attorney-in-fact (for the condominium unit owners), which policy or policies shall identify the interest of each condominium unit owner (owner's name, unit number, the appurtenant undivided interest in the General Common Elements), and which shall provide for a standard, non-contributory mortgage clause in favor of each first mortgagee, and shall further provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each first mortgagee. The managing agent or Board of Directors shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor.

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 with 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 any such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units for insurance purposes shall be made periodically by one or more written appraisals, copies of which shall be furnished upon request to each mortgagee of a condominium unit. In addition, each owner shall be notified of such appraisals.

Insurance coverage on the furnishings, additions and improvements incorporated into a unit and all items of personal property belonging to an owner and casualty and public liability insurance coverage within each individual unit shall be the responsibility of the owner thereof.

21. Owners' Personal Obligation for Payment of Assessments and Special District Charges. The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing 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. In the event that the Association fails to pay a service charge imposed by a special service district, each owner shall be personally responsible for such payment to the special service district, notwithstanding the fact that the owner has already paid the Association therefor.

22. Lien for Nonpayment of Common Expenses. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit, including interest thereon at ten percent per annum, or at such other rate of interest fixed by the managing agent, owners' association, or majority of owners of units, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except:

(a) Tax and special assessment liens on the unit in favor of any taxing entity; 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, including additional advances, refinance or extension of these obligations made thereon prior to the arising of such a lien.

To evidence such lien the Board of Directors or managing agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner or reputed owner of the condominium unit and a description of the condominium 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 office of the Clerk and Recorder of Gunnison County, State of Colorado.

Such lien for the common expenses shall attach from the date of the failure of payment of the assessment, and may be enforced by the foreclosure on the defaulting owner's condominium unit by the association in like manner as a mortgage or deed of trust on real property upon recording of a notice or claim thereof. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the association a reasonable rental for the condominium unit during the period of foreclosure, and the association shall have the power to bid in the condominium unit at foreclosure sale and shall have the power to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a 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 same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expense payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

23. Liability for Common Expense upon Transfer of Condominium Unit. Upon payment of a reasonable fee not to exceed twenty-five dollars (\$25.00) and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium unit, the association, by its managing agent or Board of Directors, 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 such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which 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 is 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.

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 therefor; provided, however, that upon payment of a reasonable fee and upon written request, any prospective grantee shall be entitled to a written statement from the managing agent or Board of Directors, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the subject unit.

24. Mortgaging a Condominium 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 condominium unit may create junior mortgages on the following conditions: (1) 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 Certificate of Incorporation of the owners' association and the Bylaws of the owners' association; (2) 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 association.

25. Attorney-In-Fact in Case of Destruction, Repair, Obsolescence and Condemnation. This Declaration hereby makes mandatory and irrevocable appointment of an Attorney-In-Fact to deal with the property upon its destruction, repair, obsolescence or condemnation.

Title to any Condominium 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 during the life of J. R. Young of Van Buren, Arkansas, and his now living descendants, plus 21 years, the managing agent then appointed and acting in accordance with paragraph 14 hereof, otherwise the association as defined by paragraph 1(m) hereof and organized in accordance with paragraph 14 hereof, their true and lawful attorney in their name, place and stead for the purpose of dealing with the property upon its destruction obsolescence or condemnation as hereafter provided. Said Attorney-In-Fact shall have full and complete authorization, right and power to make, execute and delivery any contracts, deed or any other instrument with respect to the interest of a condominium 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 they existed prior to the damage, with each unit and the General Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Attorney-In-Fact for the purpose of repair, restoration or replacements unless the owners of a majority of the condominium units and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(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 attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The attorney-in-fact 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 half of the units destroyed or seriously damaged, such destruction or damage shall be promptly repaired and reconstructed by the attorney-in-fact, using the proceeds

of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessments shall be a common expense and made pro rata according to each owner's fractional interest in the General Common Elements, and shall be due and payable within thirty days after written notice thereof. The attorney-in-fact shall have the authority 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 upon his condominium unit may be enforced and collected as is provided in Paragraph 22. In addition thereto, the attorney-in-fact shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the association. The proceeds derived from the sale of such condominium 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 expenses;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority;
- (5) The balance remaining, if any, shall be paid to the condominium unit owners.

(c) If more than half of the units are destroyed or seriously damaged, and if the owners of a majority of units, or more, do not voluntarily, within one hundred eighty (180) days thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the attorney-in-fact shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the attorney-in-fact, the entire remaining premises shall be sold by the attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the map and the Bylaws. The insurance settlement proceeds shall be collected by the attorney-in-fact and such proceeds shall be divided by the attorney-in-fact according to each unit owner's interest (as such interest appears on the policy or policies), and such divided proceeds shall be paid into a separate account representing each condominium unit. Each such account shall be in the name of the attorney-in-fact, and shall be further identified by the unit number and the name of the owner. From each separate account, the attorney-in-fact shall use and disburse the total amount of each of such funds without contribution from one account to the other, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each account the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's fractional 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 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 of a majority of units, or more, 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 assessments made in connection with such plan shall be a common expense and made pro rata according to each owner's fractional 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 attorney-in-fact shall have the authority 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 condominium unit and may be enforced and collected as is provided in Paragraph 22.

In addition thereto, the attorney-in-fact shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided; and if not so paid, the attorney-in-fact shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the attorney-in-fact. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the attorney-in-fact for the same purposes and in the same order as provided in subparagraph (b) (1) through (5) of this paragraph.

(d) Owners of a majority or more units may agree that the condominium units are obsolete and that the same should be renewed or reconstructed. In such instance, then the expenses thereof shall be payable by all of the owners as common expenses.

(e) Owners of a majority or more units may agree that the condominium units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every first mortgagee. In such instance, the attorney-in-fact 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 attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The sales proceeds shall be apportioned among the owners on the basis of each owner's fractional interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts representing each condominium unit. Each such account shall be in the name of the attorney-in-fact, and shall be further identified by the number of the unit and name of the owner. From each separate account, the attorney-in-fact shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b) (1) through (5) of this paragraph.

(f) Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply:

(1) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the attorney-in-fact.

(2) Complete Taking. In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The condemnation award shall be apportioned among the owners on the basis of each owner's fractional interest in the General Common Elements, provided that if a standard different from the value of the property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principal set forth in the last preceding paragraph, the attorney-in-fact shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in subparagraph (e) of this paragraph.

(3) Partial Taking. In the event that less than the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable, the attorney-in-fact shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the owners, as follows: (a) the total amount allocated to taking of or injury to the General Common Elements shall be apportioned among the owners on the basis of each owner's fractional interest in the General Common Elements, (b) the total amount allocated to severance damages shall be apportioned to those condominium units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular unit and/or improvements an owner has made within his own unit shall be apportioned to the particular unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the attorney-in-fact determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the attorney-in-fact shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in subparagraph (e) of this paragraph.

(4) Reorganization. In the event a partial taking results in the taking of a complete unit, the owner thereof shall automatically cease to be a member of the association. Thereafter the association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principals employed in this Declaration at its inception and shall submit for reallocation to the owners of remaining units for amendment of this Declaration as provided in Paragraph 18.

26. Expansion.

(a) Reservation of Right to Expand. Declarant expressly reserves the right to expand this condominium project by constructing an additional building or buildings substantially similar in design and style to prior phases. Such additional building or buildings may be constructed on Lots 23 and/or 24, Chalet Village Addition No. 3, Town of Mt. Crested Butte, County of Gunnison and State of Colorado, on other contiguous real property which may hereafter be submitted on this Declaration, or on a combination thereof.

(b) Supplemental Declaration and Supplemental Map. Such expansion shall be accomplished by Declarant filing for record in the office of the Clerk and Recorder of Gunnison County, Colorado, a supplement to this Declaration containing a schedule of undivided interests in the Common Elements which shall be appurtenant to the units contained in the original building and in the new building(s), together with a Supplemental Condominium Map containing generally such information with respect to new building(s) as appears on the original Condominium Map. The undivided interests in the Common Elements appurtenant to the units in the original buildings and in the Common Elements appurtenant to units contained in new buildings resulting from the expansion of the project shall have a permanent character and shall not be altered without the consent of all of the owners of the condominium units in the portion of the condominium ownership project in question, expressed in a duly recorded amendment to this Declaration; provided, however, that such undivided interests of the owners in the Common Elements may be modified by Declarant (without the necessity of approval of the owners or lienholders) in the event of the expansion of the project. In re-allocating undivided interests in the Common Elements upon expansion, primary emphasis shall be given to the square footage of each unit so that the relative undivided interests of all units in the expanded project area shall be generally proportional to the square footage of each unit; provided, however, that nothing herein shall prevent Declarant from making adjustments to the undivided interests appurtenant to some units based upon such factors, without limitation, as unit value, sleeping capacity, age, parity with units in earlier phases of the project or such other reasonable factors as Declarant might deem relevant.

In the event of the expansion of the project, the following provisions shall be applicable:

(1) All owners of condominium units in the original building of the project and in new building(s) constructed as a result of expansion of the project shall be responsible for assessments as provided in this Declaration with regard to all of the Common Elements situated within the expanded project area and appurtenant to the units in the original building of the project and in new building(s) situated in the expanded project area, with each owner's share of such assessments being equal to such owner's proportionate interest in all of the Common Elements within the expanded project area, as set forth in the Supplemental Declaration.

(2) The premiums for insurance policies to be obtained by the Association as provided in this Declaration shall be allocated by the Association between the owners of units in the original building and the owners of units in new buildings resulting from the expansion of the project. The premiums for insurance policies obtained by the Association and allocated (in accordance with the first sentence of this

subparagraph (2)) shall be apportioned among the owners of units in the entire condominium project with each owner's share of such assessments being equal to such owner's proportionate interest in all of the Common Elements within the expanded project area.

(3) Except as provided in subparagraph 26 (b)(2), the owner of each condominium unit contained in the original project and in such condominium buildings resulting from the expansion of the project shall have the number of votes equal to such owner's proportionate interest in all of the Common Elements within the expanded project area.

(4) The Declarant hereby reserves unto itself, its successors and assigns, the right to establish access and/or utility easements through any of the common elements, as may be reasonably necessary to expand the project.

(c) Expansion of Definitions and Interests. Except as otherwise provided in this paragraph 26, in the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the project as so expanded.

(d) Declaration Operative on New Buildings. The new building or buildings and the site or sites upon which located shall be subject to all the terms and conditions of this Declaration and of the Supplemental Condominium Declaration, and the condominium units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon the recording of the Supplemental Condominium Map and Supplemental Condominium Declaration in the office of the Clerk and Recorder of Gunnison County, Colorado.

(e) Time Limit on Expansion. Declarant shall have until December 31, 1991, to expand this condominium project by constructing additional buildings on the premises. On January 1, 1992, title to any part of the premises for which a Condominium Map has not been filed shall automatically pass to the association, its successors and assigns.

27. Personal Property for Common Use. The association may acquire and hold for the use and benefit of all of the condominium owners, real, tangible, and intangible 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 condominium 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 condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may 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, upon notice to the association of such transfer.

28. Mailing of Notices. Each owner shall register his mailing address with the association and the managing agent and all notices of any kind given pursuant to this Declaration intended to be served upon any owner shall be sent by certified mail, return receipt requested, postage prepaid, addressed

in the name of the owner at such registered mailing address. All notices or demands intended to be served upon the association and Managing Agent shall be given by certified mail, return receipt requested, postage prepaid, to the address thereof. All notices or demands to be served on mortgagees pursuant hereto, shall be sent by certified mail, return receipt requested, postage prepaid, addressed in the name of the mortgagee at such address as the mortgagee may have furnished to the association and the Managing Agent in writing. Unless the mortgagee so furnished such address, the mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section. No notice of any kind shall be effective unless such notice conforms to the requirements of this paragraph.

29. Period of Condominium Ownership. The separate condominium estates created by the Declaration and the map shall continue until this Declaration is revoked in the manner and as is provided in Paragraph 18 of this Declaration or until terminated in the manner and as is provided in subparagraphs (c), (e) and (f) of Paragraph 25 of this Declaration.

30. Time Sharing.

(a) As used in this Declaration, "Time Sharing" means the creation of interests in a Unit of either interval estates or time-span estates, as such estates are defined by the Colorado statutes as amended from time to time.

(b) Time Sharing is permitted in this Condominium Project.

(c) Each time share estate shall constitute for all purposes an estate or interest in real property, separate and distinct from all other time share estates in the same Unit or any other Unit, and such estates may be separately conveyed and encumbered.

(1) With respect to each Unit wherein Time Sharing has been implemented, each Owner of a time share estate therein shall be individually liable to the Association for all assessments, property taxes both real and personal, and charges levied pursuant to this Declaration, the Articles of Incorporation and/or the Bylaws of the Association against or with respect to that Unit. However, with respect to each other, each time share Owner shall be responsible only for a fraction of such assessments, property taxes both real and personal and charges proportionate to the magnitude of his undivided interest in the fee to the Unit.

(2) The creation of time share estates in any Unit shall not modify the voting rights appurtenant to such Unit.

(3) No person shall have standing to bring suit for partition of any time share Unit.

(4) In the event that any condemnation award, any insurance proceeds, the proceeds of any sale, or any other sums shall become payable to all of the time share Owners of a Unit, the portion payable to each time share Owner shall be proportionate to the magnitude of his undivided interest in the fee to the Unit.

31. 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 affect 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 law.

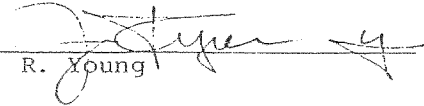
(c) Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

(d) Whenever any powers, rights, authorities or duties are vested or referred to as being exercisable by the association, the Board of Directors or any officer or agent thereof, and no such association shall have been formed or, having been formed, shall become inactive or defunct, and the owners of a majority of the condominium units shall have appointed a manager as defined in Paragraph 1 hereof, in accordance with the provisions of Paragraph 14 hereof, then in such event, the manager shall be authorized and empowered, and shall be responsible to do or perform any act, or to make any determination and to exercise all of the same rights, powers and benefits which would have been exercisable by the association, the officers, agents or Board of Directors thereof, or by any managing agent appointed thereby; unless such authority is otherwise limited by the document appointing such manager.

32. Attorney's Fees. It is agreed that if any action is brought in a court of law by any party to this Declaration as to the enforcement or interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.

33. Binding Agreement. The provisions of this Declaration, the association Bylaws and all subsequent agreements and determinations lawfully made by the association, manager or attorney-in-fact, shall be binding on all owners of units, their representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, this Declaration has been duly executed this 21 day of April, 198.


J. R. Young

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 21st day of April, 198/, by J. R. Young.

Witness my hand and official seal.

My Commission Expires
January 13, 1983

My commission expires: _____

