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## CONDOMINIUM DECLARATION

FOR

## EAGLE VIEW CONDOMINIUMS

COUNTY OF LARIMER

397754

STATE OF COLORADO

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## KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, EAGLE VIEW, a partnership (hereinafter "Declarant") is the owner of the real property more fully described on Exhibit "A" attached hereto and made a part hereof; and

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

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of the condominium real property estates as set forth in Exhibit "A", subject to the taxes, assessments and reservations in this Declaration, consisting of the area or space contained in each of the air space units located in the building improvements and the co-ownership by the individual and separate owners thereof, as tenants-in-common, of all of the remaining property.

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

ARTICLE IDefinitions

Unless otherwise specifically provided, the following definitions shall apply:

(a) Unit. One individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of each unit as shown on the Condominium 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, located within the unit.

(b) Condominium Unit. The fee simple interest and title in and to a unit together with the undivided interest in the general common elements and the appurtenant limited common elements thereto.

(c) Owner. Any person, persons, corporation, partnership, trust, association or other legal entity, or any combination thereof, who own or owns an interest in one or more condominium units.

(d) General Common Elements. The real property described in Exhibit "A" and the improvements thereon except the units; the structural components of the buildings; such improvements, buildings or areas as are provided for community recreation, utility or for common use; service walks, parking areas, courts and balconies; all other parts of such land and the improvements

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thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air space above such land, all of which shall be owned, as tenants-in-common, by the owners of the separate units, each owner of a unit having an undivided interest in such general common elements as is provided hereinafter.

(e) Limited Common Elements. Those parts of the general common elements which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one but fewer than all of the condominium unit owners.

(f) Declaration. This Declaration and any supplements thereto.

(g) Condominium Project. All of the land and improvements thereon and appurtenances thereto which are subject to this Declaration.

(h) Association. The Association formed pursuant to the Colorado Nonprofit Corporation Act bearing the name of this condominium project, the Articles of Incorporation and By-Laws of which shall govern the administration of this condominium project and the members of which shall be all of the owners of the condominium units.

(i) Common Expenses. (i) Expenses of administration, operation and management, repair or replacement of the common elements; (ii) expenses declared common expenses by the provisions of this Declaration or the By-Laws of the Association; (iii) all sums lawfully assessed against the general common elements by the Board of Directors of the Association; and (iv) expenses agreed upon as common expenses by the Association.

(j) Condominium Map. The engineering survey of the land depicting and locating 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 land and improvements thereon.

(k) Building. A single building containing units as shown on the condominium map.

## ARTICLE II

### Division of Property Into Condominium Units

(a) The real property described in Exhibit "A" and the improvements thereon are hereby divided into the fee simple estates as is set forth on Exhibit "B", attached hereto and made a part hereof. Each such estate shall consist of the separately designated units and the undivided interest in and to the general common elements appurtenant to each unit as set forth therein.

(b) The right is reserved by Declarant to (i) physically combine the space within one unit with the space within one or more adjoining units or (ii) to combine a part of or combination of parts of the space within one unit with part or parts of the space within one or more adjoining units. Any such physical changes to units shall be reflected by an amendment to Exhibit "B" and the condominium map, which amendments shall set forth the reapportioned undivided interests of the affected units; provided, however, that no such physical changes shall be made without the written consent of the mortgagee(s) of the affected unit(s); and provided, further, that the cost and expense incurred for legal, architectural or engineering fees relative to

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preparation of such amendment shall be borne by that person requesting such physical change to the units.

(c) Declarant at its sole discretion further reserves the right prior to completion of the condominium project to construct one (1) additional building containing one (1) additional unit. If such additional building is constructed, such change shall be reflected by amendment to Exhibit "B" and the condominium map, which amendment shall set forth the reapportioned undivided interests of the entire condominium project.

### ARTICLE III

#### Limited Common Elements

A portion of the general common elements is reserved for the exclusive use of the individual owners of the respective units and such areas are referred to as "limited common elements". The limited common elements so reserved shall be identified on the condominium map; provided, however, that any court or balcony which is accessible from, associated with and which adjoins a unit and any other limited common element so identified on the condominium map shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by the other owners of the general common elements, except by invitation. All of the owners of condominium units in this condominium project shall have a non-exclusive right in common with all of the other owners to the use of sidewalks, pathways, roads and any streets located within the entire condominium project. No reference thereto, whether such limited common elements are exclusive or non-exclusive, need to be made in any deed, instrument of conveyance or other instrument.

### ARTICLE IV

#### Condominium Map

The condominium map may be filed for record in whole or in parts, sections or supplements, as construction of the units and other improvements are substantially completed. The condominium map (or any part or section thereof) depicting units shall not be filed for record until the building in which the units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically. Each such condominium map shall be filed for record prior to the conveyance of the condominium units shown thereon. Each such condominium map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the buildings; the floor and elevation plans; the location of the unit within the building, both horizontally and vertically; the thickness of the common walls between or separating the units; the location of any structural components or supporting elements of a building located within a unit; and the unit designations and the building symbol. Each such condominium map shall contain the certificate of a registered professional engineer or licensed architect, or both, certifying that the condominium map substantially depicts the location and the horizontal and vertical measurements of the units, the unit designations, building symbols, ceilings as constructed, the elevations of the unfinished floors and that such condominium map was prepared subsequent to substantial completion of the improvements. In interpreting the condominium map, the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the condominium map from time to time to conform the same according to the actual location of any of the constructed improvements and to establish, vacate and relocate easements, access road easements and on-site parking areas.

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ARTICLE VDescription of Condominium Unit

(a) Every contract for the sale of a condominium unit written prior to the filing for record of the condominium map or Declaration may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium. The location of such condominium unit on the property described in Exhibit "A" shall be depicted on the condominium map subsequently filed for record.

(b) Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit designation, the building symbol, followed by the name of this condominium with further reference to the condominium map and Declaration filed for record. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit but also the general common elements and the limited common elements appurtenant thereto. Each such description shall be constructed to include a non-exclusive easement for ingress and egress to an owner's unit and use of all of the limited common elements.

(c) The reference to the condominium map and Declaration in any instrument shall be deemed to include any supplements to the condominium map or Declaration without specific reference thereto.

ARTICLE VITitle to Condominium Unit

(a) A condominium unit may be held and owned in any real property tenancy relationship recognized under the Laws of the State of Colorado.

(b) Each unit, the appurtenant undivided interest in the general common elements and the appurtenant limited common elements shall together comprise one condominium unit, shall be inseparable and may be conveyed, leased, devised or encumbered only as a condominium unit.

ARTICLE VIIAssessment and Taxation

Declarant shall give written notice to the County Assessor of the creation of condominium real property ownership interests in this real 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.

ARTICLE VIIINon-Partition 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

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general 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.

#### ARTICLE IX

##### Easements for Encroachments

If any portion of the general common elements encroaches upon a unit or units, or if any portion of a unit encroaches upon the general common elements or upon and adjoining unit or units, a valid easement for the encroachment and for the maintenance shall not be considered or determined to be encumbrances either on the general common elements or on the units for purposes of marketability of title or other purposes.

#### ARTICLE X

##### Termination of Mechanic's Lien Rights and Indemnification

Subsequent to the completion or the improvements described on the condominium map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the unit owner, his agents, his contractor or subcontractor shall be the basis for filing of a lien against the general common elements or against the unit of any other unit owner who did not expressly consent to or request the services or materials. 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 projects incorporated in an owner's unit at such owner's consent or request. The provisions herein contained are subject to the reserved rights as set forth in Article XIII.

#### ARTICLE XI

##### Condominium Association

(a) The interests of all owners of condominium units shall be governed and administered by the Articles of Incorporation and By-Laws of the Eagle View Condominium Association.

(b) An owner of a condominium unit upon becoming an owner shall be a member of the Association and shall remain a member for the period of his ownership.

#### ARTICLE XII

##### Certificate of Identity of Management Body

There shall be recorded from time to time a Certificate of Identity and the addresses of the persons then comprising the management board (Directors and Officers) together with the address of the Managing Agent, if any. Such Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of time elapsed since date thereof. The first such Certificate shall be recorded on or before ninety (90) days after recording this Declaration.

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ARTICLE XIIIAccess to Units for Maintenance, Repair and Emergencies

(a) The owners shall have the irrevocable right, to be exercised by the Managing Agent, if any, or 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; provided, however, that such right of access shall be immediate for making emergency repairs therein in order to prevent damage to the general common elements or to another unit.

(b) Damage to the interior or any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another unit shall be a common expense of all of the owners; provided, however, that if such damage is caused by negligent or tortious act of a unit owner, members of his family, his agent, employee, invitee, licensee or tenant, then such unit owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements of the general common elements, whether located inside or outside of units (unless necessitated by the negligence, misuse or tortious act of a unit owner, in which case such expense shall be charged to such unit owner), shall be the common expense of all of the owners.

ARTICLE XIVMaintenance Responsibility of Unit Owner

(a) For maintenance purposes, an owner shall be obligated to keep in good repair and condition the supporting walls, the 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, which make up the finished surfaces of the perimeter walls, ceilings and floors within his unit, including unit doors and windows. The lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his unit which serve one or more other units are general common elements. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Directors. An owner's right to repair, alter and remodel the interior of his unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.

(b) 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 utilities enter the unit shall be maintained and kept in good repair and condition 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 right of way. An owner shall always keep the limited common elements appurtenant to his unit in a clean and sanitary condition.

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ARTICLE XVMaintenance of Common Elements

(a) The maintenance and operation of the common elements shall be the responsibility and the expense of the Association and a common expense of all the owners.

(b) There shall be no additions, alterations or improvements of or to the general and limited common elements by the Association requiring an assessment in excess of Two Hundred Dollars (\$200.00) per unit in any one calendar year without prior approval of the majority of the owners. Such approval shall be expressed by a vote in favor thereof by the owners of a majority in interest at a special or regular meeting of Association members. Such expenditure(s) shall be a common expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any general or limited common element or common personal property.

ARTICLE XVIMandatory Compliance with Declaration

Each owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Rules and Regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorneys' fees incurred in connection therewith, which action shall be maintainable by the Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

ARTICLE XVIIRevocation or Amendment of Declaration

Except as in otherwise provided, this Declaration shall not be revoked unless all of the owners and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all of the condominium units consent and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended unless the owners representing an aggregate ownership interest of sixty percent (60%), or more, of the general common elements and sixty percent (60%) of the holders of recorded first mortgages or deeds of trust consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the undivided interests in the general common elements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all of the unit owners and all of the holders of any recorded mortgage or deed of trust as expressed in an amended Declaration duly recorded.

ARTICLE XVIIIAssessment for Common Expenses

(a) 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

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according to each owner's interest in and to the general common elements and as is provided in Article XXI, Paragraph (c). 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 for the repair or maintenance thereof. Assessments for the estimated common expenses shall be due in advance on the first day of each calendar month, or less frequently as may be determined by the Board of Directors. The Board of Directors shall prepare and deliver or mail to each owner a statement for the common expenses.

(b) In the event the ownership of a condominium unit, title to which is derived from Declarant, commences on a day other than the first day of the assessment period, the assessment for that period shall be prorated.

(c) Assessments 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 unit owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the general common elements, which sum may include but shall not be limited to, expenses of management, taxes and special assessments until separately assessed; premiums for insurance; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash and garbage collections; wages; common water and sewer charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Managing Agent, if any, or Board of Directors on behalf of the unit owners, under or by reason of this Declaration and the Articles of Incorporation and By-Laws of the Association; for any deficit remaining from a previous period; for the creation of a reasonable contingency, reserve, working capital and sinking funds as well as other costs and expenses relating to the general common elements.

(d) The omission or failure to fix the assessment or deliver a statement for any period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay the same.

#### ARTICLE XIX

##### Insurance

(a) The Board of Directors of the Association shall obtain and maintain, to the extent obtainable, the following insurance: (i) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire condominium improvements (including furniture, furnishings or other personal property supplied by or installed by unit owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation, and which shall contain a standard mortgage clause in favor of each mortgagee of a condominium unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear; (ii) public liability insurance in such limits as the Board of Directors may from time to time determine, covering each member of the Board, the Managing Agent, if any, and each unit owner. Such public liability coverage shall also cover cross liability claims of one insured against the other. Initially,



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such public liability insurance shall be in a single limit of One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence and in a limit of Five Hundred Thousand Dollars (\$500,000.00) for each occurrence; (iii) plate or other glass insurance; (iv) workmen's compensation insurance; (v) such other insurance as the Board of Directors may determine.

(b) All policies of public liability insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof together with proof of payments of premiums shall be delivered to all mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the condominium unit owners, which policy or policies shall identify the interest of each condominium unit owner (owner's name, unit number and building designation).

(c) Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the entire condominium improvements, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this Article XIX. In no event shall the insurance policy contain a co-insurance clause for less than ninety percent (90%) of the full replacement cost.

(d) Unit owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation and provided, further, that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner.

(e) Insurance coverage on furnishings and other items of personal or other property belonging to an owner and public liability coverage within each unit shall be the sole and direct responsibility of the unit owners thereof and the Board of Directors and the Association shall have no responsibility therefor.

#### ARTICLE XX

##### Owner's Personal Obligation for Payment of Assessments

The amount of the common expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof. 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. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid for more than ten (10) days from the due date for payment thereof. In the event of default in the payment of the assessment, the unit owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees, incurred together with such late

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charges as is provided by the By-Laws of the Association. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the lien, nor shall such suit be or construed to be a waiver of the lien.

#### ARTICLE XXI

##### Association Lien for Non-Payment of Common Expenses

(a) All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessments liens on the condominium unit in favor of any assessing unit, and 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 encumbrances. To evidence such lien the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon. Such a notice of lien shall be signed by one of the Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the office of the County Clerk and Recorder. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure of the defaulting owner's condominium 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 proceedings, the owner shall be required to pay the costs, expenses and attorneys' fees incurred for filing the lien, and in the event of foreclosure proceedings, all additional costs, all expenses and reasonable attorneys' fees incurred, but not less than the amount recommended by the subject County Bar Association according to the then current published and recommended fee schedule for foreclosure proceedings (for foreclosure proceedings through Court). The Owner of the condominium unit being foreclosed shall be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid in the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same.

(c) Any mortgagee holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amount paid of the same rank as the lien of his mortgage or encumbrance without the necessity of having to record a notice or claim of such lien. Upon request of a mortgagee the Association shall report to the mortgagee of a condominium unit any unpaid assessment remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a mortgagee shall have furnished to the Board of Directors notice of such encumbrance.

(d) The recorded lien may be released by recording a Release of Lien to be signed by an officer of the Association on behalf of the Association.

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ARTICLE XXIIAscertainability of Unpaid Common Expenses

(a) Upon written request for a Statement of Account by an owner or his agent, prospective mortgagee or prospective grantee of a condominium unit, the Association shall furnish a written statement of the amount of any unpaid common expenses, the amount of the current assessments, the dates that assessments are due, the amount for any advanced payments made, prepaid items such as insurance premiums and reserves therefor, deficiencies in reserve accounts, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request shall be complied with within ten (10) days after receipt of such written request, all unpaid common expenses which become due prior to the date of such request shall be subordinate to the rights of the person requesting such statement. A service fee of not more than Fifty Dollars (\$50.00) shall be paid for furnishing the Statement of Account.

(b) The provisions set forth in this Article XXII shall not apply to the initial sales and conveyances of the condominium units made by Declarant and such sales shall be free from all common expenses to the date of conveyance or to a date as agreed upon by Declarant and Declarant's grantee.

ARTICLE XXIIIJunior Mortgages

The owner of a condominium unit may create a junior mortgage or deed of trust (junior to a first mortgage or deed of trust), liens or encumbrances on his condominium unit; provided, however, that any such junior mortgages, liens or encumbrances shall always be subordinate to the prior and paramount lien of the Association for common expenses and all of the terms, conditions, covenants, restrictions, uses, limitations and obligations under this Declaration, the Association's Articles of Incorporation and By-Laws, and provided, further, that such junior encumbrancer(s) shall release, for purposes of restoration of any improvements upon the encumbered condominium unit, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

ARTICLE XXIVDestruction, Damage or Obsolescence

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or damage, for its repair and reconstruction or its obsolescence and to maintain, repair and improve the condominium units, buildings and general and limited common elements. 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 or other instrument of conveyance from the Declarant or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose

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of dealing with the property upon its damage or destruction or obsolescence as is hereinafter provided. As attorney-in-fact the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers or agents, 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 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 improvement(s) to substantially the same condition in which they 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, reconstruction or replacement, unless the owners 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 improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) 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 improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty percent (60%) of the total replacement cost of all of the condominium units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made prorata according to each owner's interest in the general common elements and shall be due and payable within thirty (30) 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 improvement(s) 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 Article XXI. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium 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 condominium unit of the delinquent owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Article XXIV. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent (8%) per annum on the amount of the assessment and all reasonable attorneys' fees. 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:

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- i. For payment of taxes and special assessments liens in favor of any assessing entity and the customary expense of sale;
- ii. For payment of the balance of the lien of any first mortgage;
- iii. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
- iv. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- v. The balance remaining, if any, shall be paid to the condominium unit owner.

(c) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than sixty percent (60%) of the total replacement cost of all of the condominium units (in this project), not including land, and if the owners representing an aggregate ownership interest of fifty-one percent (51%), or more, make provisions for reconstruction, which plan must have the approval or consent of fifty-one percent (51%), or more, of the first mortgagees of record, then 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 or Assistant Secretary, the entire remaining premises shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the condominium map, Articles of Incorporation and the By-Laws. Assessments for common expenses shall not be apated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. 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 forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the condominium unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's 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 Paragraph (b)(i through v) of this Article XXIV.

(d) In the event of such damage or destruction under Paragraph (b) of this Article XXIV, and if a plan for reconstruction is adopted as therein provided, 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 prorata according to each owner's 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 (30) days after written notice thereof. The Association shall

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have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. 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 Article XXI. In addition thereto, the Association, as 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 Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent (8%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium 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)(i through v) of this Article XXIV.

(e) The owners representing an aggregate ownership interest of eighty percent (80%), or more, of the general common elements may agree that the general common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan has the approval of eighty percent (80%), or more, of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as 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 Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent (8%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of the condominium 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)(i through v) of this Article XXIV.

(f) The owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan or agreement 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 or Assistant 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 condominium map, the Articles of Incorporation and the By-Laws. The sale proceeds shall be apportioned among the owners on the basis of each owner's interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the

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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 amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Paragraph (b)(i through v) of this Article XXIV.

#### ARTICLE XXV

##### Acquisition of Additional Property

The Association may acquire and hold for the benefit of all of the condominium unit owners real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the condominium unit owners in the same proportions as their respective interests in the general common elements, and such interest therein shall not be transferable except with a conveyance of a condominium unit. A conveyance of a condominium unit shall transfer to the grantee ownership of the grantor's beneficial interest in such personal property associated with the conveyed condominium unit.

#### ARTICLE XXVI

##### Parking

All automobile parking facilities shall be under the control of the Association; provided, however, that the Association by its President or other executive officer shall cause to be assigned to the owner(s) of a condominium unit one parking space on the condominium project, which parking space, to the extent possible, shall be located relatively proximate to that owner's condominium unit; provided, further, that all assigned parking spaces may from time to time be reassigned in order to accomplish the purpose stated.

#### ARTICLE XXVII

##### Restrictive Covenants

(a) The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. All buildings or structures erected upon the property shall be of new construction and no buildings or structures shall be moved from other locations onto said premises and subject to the provisions of Article II, paragraph (c), no subsequent buildings other than buildings shown on the condominium map shall be erected or constructed on the property except by vote of the majority in interest of the condominium unit owners. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

(b) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, his agent, employees and contractors, successors or assigns to maintain during the period of construction and sale or subsequent leasing of the condominium units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of condominium units and interests including, but without limitation, a

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business office, storage area, construction yards, signs, model units, sales office, construction office, parking areas and lighting.

(c) No animals, livestock or poultry of any kind shall be raised, bred or kept on the property, except that dogs, cats or other household pets may be kept, subject to rules and regulations from time to time adopted and amended by the Association.

(d) No advertising signs (except one of not more than four square feet "For Rent" or "For Sale" sign per unit), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any condominium unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property; provided further, however, that the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings and improvements, if any, of the Declarant, its agent, contractors, successors and assigns during the construction and sale and rental period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

(e) No nuisances shall be allowed on the condominium property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard to exist. No unit owner shall permit any use of his unit or make use of the common elements which will increase the rate of insurance upon the condominium property. The Association may adopt By-Laws and Rules and Regulations relative to abatement and enjoynment of nuisances.

(f) No immoral, improper, offensive or unlawful use shall be permitted or made of the condominium property or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

(g) Rules and regulations may be adopted by the Board of Directors concerning and governing the use of the general and limited common elements; provided, however, that such rules and regulations shall be uniform and non-discriminatory. Copies of all such rules and regulations shall be furnished to unit owners prior to the time that they become effective.

(h) Except for those improvements erected or installed by Declarant, no exterior additions, alterations or decorating to any buildings, nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by the Association or by a representative designated by it.

(i) Snow removal and maintenance of the condominium project's rights-of-way for ingress and egress and the parking areas shall be the responsibility of the Association. Snow removal of the common area walkways shall also be the responsibility of the Association; however, snow removal of the limited common areas which are entryways to a condominium unit shall be the responsibility of that particular condominium unit owner.



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ARTICLE XXVIIIAssessment Reserves

The Association may require an owner other than Declarant to deposit with the Association up to three times the amount of the estimated monthly common assessment, without interest, which sum shall be held by the Association as a reserve to be used for paying such owner's monthly common assessment and for working capital. Such an advance payment shall not relieve any owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon the sale of his condominium unit, an owner shall be entitled to a credit from his grantee for any unused portion thereof.

ARTICLE XXIXGeneral Reservations

(a) Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership of the condominium project and for the best interests of all of the condominium unit owners, including the Declarant, in order to serve the entire condominium project.

(b) Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise the rights, duties and functions of the Board of Directors of the Association until all of the condominium units have been sold. During such period of development and sale, the monthly assessment for common expenses shall be based upon the estimate of the actual cost excluding therefrom any estimated amount for contingencies, reserves or sinking funds, and Declarant shall pay its prorata share thereof for those condominium units which have been completed, are ready for occupancy and are depicted on the condominium map or section thereof which has been filed for record.

(c) Declarant reserves the right to develop and construct the condominium units described in Exhibit "B" in separate phases, each such phase to consist of at least one building. Declarant therefore reserves the right to use that part of the property described in Exhibit "A" as is reasonably and appropriately necessary for the construction of all of the buildings, improvements and appurtenances thereto during the separate or continuous development and construction phases. As is provided in Article IV, the condominium map may be filed for record in whole or in parts, sections or supplements as construction of the units and other improvements are subsequently completed. Declarant reserves the right to convey the separate condominium units which are constructed subsequent to the first construction phase, and each such conveyance shall vest in the grantee thereof a fee simple interest in and to the unit (the air space) together with the 1/45th appurtenant fee simple interest subject to the provisions of Article II, paragraph (c), in and to all of the general common elements in this condominium project. Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit as is provided in Article V without the necessity of an express reservation of the rights reserved herein and without the necessity of an express exclusion or exception in each contract, deed or other instrument excluding or excepting (therefrom) any other condominium unit (both of air space within the unit and the appurtenant undivided interest as expressed in this Declaration), whether such other condominium

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unit have been constructed in the initial phase or in a subsequent phase. During the period when fewer than all of the condominium units described in Exhibit "B" have been erected, the common expenses shall be allocated equally among the owners of such existing condominium units and during such period Declarant shall pay the real estate taxes and assessments on that part of the land described in Exhibit "A" which remains undeveloped but on which condominium units will be subsequently constructed. Declarant's reserved rights to develop this condominium project in separate phases shall be coupled with the duty to construct each of the twelve (12) buildings [or thirteen (13) subject to the provisions of Article II, paragraph (c)] referred to in Exhibit "B" substantially similar in design, and all units shall be substantially similar in size and construction.

(d) Title to and ownership of each condominium unit is expressly subject to the General Reservations contained in this Article XXIX.

#### ARTICLE XXX

##### Declarant's Warranties

Declarant warrants as follows:

(a) That the condominium project has been created and is existing in full compliance with the Condominium Ownership Act of the State of Colorado.

(b) That and "right of first refusal" contained in this Declaration or any condominium document shall not impair the rights of a first mortgagee or holder of a first deed of trust to: (i) foreclose or take title to a condominium unit pursuant to the remedies provided in the mortgage or deed of trust, or (ii) accept a deed in lieu of foreclosure in the event of default by a mortgagor, or (iii) sell or lease a condominium unit acquired by the mortgagee.

(c) That any first mortgagee or holder of a first deed of trust who obtains title to a condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage or deed of trust will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee or holder of a first deed of trust.

(d) That except as provided by statute in case of condemnation or substantial loss to the units and/or common elements of the condominium project, unless at least two-thirds (2/3rds) of the first mortgagees or holders of a first deed of trust (based upon one vote for each first mortgage or deed of trust owned), or owners (other than Declarant) of the individual condominium units have given their prior written approval, the Association shall not be entitled to: (i) by act or omission, seek to abandon or terminate the condominium project; (ii) change the pro rata interest or obligations of any individual condominium unit for the purpose of: levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each condominium unit in the common elements; (iii) partition or subdivide any condominium unit; (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements; (The granting of easements for public utilities or for other public purposes consistent with the intended use of

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the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause); (v) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property.

(e) That any proposal or plan pursuant to which the condominium project is subject to phasing or add-ons complies with the following limitations: (i) condominium unit owner's undivided interest in the common elements are stated in the Declaration and the conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in the Declaration together with a description of the real property which will become subject to the condominium project if such alternative percentage interest becomes effective; and (ii) no change in the percentage interests in the common elements will be affected pursuant to such phasing or add-on plan more than seven (7) years after the Declaration becomes effective.

(f) That all taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium project as a whole.

(g) That no provision of the condominium documents gives a condominium unit owner, or any other party, priority over any rights of the first mortgagee or holder of the first deed of trust of the condominium unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

(h) That all amenities are a part of the condominium project and are covered by the mortgage or deed of trust at least to the same extent as are the common elements. All such common elements and amenities are fully installed, completed and in operation for use by condominium unit owners.

(i) That seventy percent (70%) of the condominium units in the phase on which a mortgage or deed of trust will be placed have been sold to bona fide purchasers who have closed or who are legally obligated to close.

(j) That common expenses shall include an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

(k) That a first mortgage or holder of a first deed of trust upon request, will be entitled to written notification from the Association of any default in the performance by the individual unit owner of any obligation under the condominium documents which is not cured within sixty (60) days.

(l) That any agreement for professional management of the condominium project, or any other contract providing for services of Declarant may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

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ARTICLE XXXIPeriod of Condominium Ownership

The separate condominium estates created by this Declaration and the condominium map shall continue until this Declaration is revoked in the manner and as is provided in Article XVII of this Declaration or until terminated in the manner as is provided in Paragraph (c) or (f) of Article XXIV of this Declaration.

ARTICLE XXXIINotice

Each owner shall register his mailing address with the Association, and notices or demand intended to be served upon an owner shall be sent by mail, postage prepaid, addressed in the name of the owner at such registered mailing address.

ARTICLE XXXIIIAcceptance of Provisions by Successors-in-Interest

The conveyance or encumbrance of a condominium unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Association By-Laws and Rules and Regulations and shall be binding upon each grantee or encumbrancer without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

ARTICLE XXXIVGeneral

(a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance 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) "Declarant" as used herein means the named Declarant, its successors and assigns.

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

(d) 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.

(e) Paragraph titles are for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

**EAGLE VIEW, a partnership**

~~By Larry J. Helmich,~~  
~~Managing General partner~~

The foregoing instrument was acknowledged, subscribed and sworn to before me this 15th day of January, 1981, by Larry J. Helmich, Managing General Partner of Eagle View, a partnership.

my hand and official seal.



**Notary Public**

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EXHIBIT "A"

Legal Description

Lot 4,  
SOUTH ST. VRAIN ADDITION to the Town of Estes Park,  
County of Larimer,  
State of Colorado

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EXHIBIT "B"

<u>Unit</u>	<u>Building</u>	<u>Appurtenant Undivided Interest</u>	<u>Unit</u>	<u>Building</u>	<u>Appurtenant Undivided Interest</u>
1	A	1/45th	1	G	1/45th
2	A	1/45th	2	G	1/45th
3	A	1/45th	3	G	1/45th
4	A	1/45th	4	G	1/45th
1	B	1/45th	1	H	1/45th
2	B	1/45th	2	H	1/45th
3	B	1/45th	3	H	1/45th
4	B	1/45th	4	H	1/45th
1	C	1/45th	1	I	1/45th
2	C	1/45th	2	I	1/45th
3	C	1/45th	3	I	1/45th
4	C	1/45th	4	I	1/45th
1	D	1/45th	1	J	1/45th
2	D	1/45th	2	J	1/45th
			3	J	1/45th
			4	J	1/45th
1	E	1/45th	1	K	1/45th
2	E	1/45th	2	K	1/45th
3	E	1/45th	3	K	1/45th
4	E	1/45th	4	K	1/45th
1	F	1/45th	1	L	1/45th
2	F	1/45th	2	L	1/45th
3	F	1/45th	3	L	1/45th
4	F	1/45th			