

**DECLARATION ESTABLISHING
MEADOW VISTA CONDOMINIUMS**

Up Above Builders, LLC, a Colorado limited liability company ("Declarant") hereby makes the following grants, submissions and declarations:

I

PURPOSE AND PLAN

1.1 Purpose. The purpose of this Declaration is to create a Condominium Common Interest Community pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, 38-33.3-101, et seq., 1973, as amended.

1.2 Plan. The Declarant is the owner of the land described on attached **Exhibit A** (Land) which is shown and described on the Map, filed pursuant to Section 2.16 hereinafter. The existing structures (Buildings) located on the Land are residential buildings with related improvements. The location of the Buildings on the Land and the dimensions thereof are shown on the Map. The Buildings contain 8 units.

Declarant hereby declares that all of the land described in **Exhibit A** shall be held or sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the land and be binding on all parties having any right, title or interest in the land or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the land to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.30-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.



The Map identifies Units as Units A, B, C, D, E, F, G and H. Each Unit shall have appurtenant thereto the undivided interest in the common elements and common expenses of the association and a portion of the votes in the association as described on attached **Exhibit B**.

II

DEFINITIONS

2.1 Act. Act means the Colorado Common Interest Ownership Act, Sections 38-33.3-101 et seq., as amended.

2.2 Association. Association means the Colorado nonprofit corporation formed for management of the Condominium and more specifically described in Article V hereof.

2.3 Association Documents. Association Documents means this Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.4 Buildings. The Buildings means the structures on the Land as shown on the Map.

2.5 Common Expenses. Common Expenses are defined in Section 6.1 hereof.

2.6 Condominium. Condominium shall mean the entity created by this Declaration and the Map and shall include Units, Common Elements, the Building and the Land as defined herein and in the Map of Meadow Vista Condominiums.

2.7 Condominium Unit or Unit. Condominium Unit or Unit means an individual air space unit contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of an air space unit as reflected on and described in the Condominium Map, together with all fixtures and improvements therein contained, except for common utility facilities, the interior decorated or finished surfaces of such Unit's interior wall, floors, ceiling, windows and doors, and the interior non-supporting or non-load bearing walls within the Unit. The interior surfaces of a window or door



means the points at which such surfaces are located when such windows or doors are closed. The term does not include the undecorated or unfinished surfaces of the perimeter walls, floors or ceilings of a Unit, any utility facilities running through the Unit that serve more than one Unit, any structural component of the building, or any other Common Element or part thereof located within the Unit. The term Unit includes the undivided interest in the General Common Elements and the Limited Common Elements appurtenant thereto.

2.8 Declarant. Declarant means Up Above Builders, LLC, a Colorado limited liability company, its representatives, successors or assigns.

2.9 Declaration. Declaration means this document with all Exhibits attached hereto which by this reference are incorporated herein, and all supplements hereto, and the Map, which documents will be recorded pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, 38-33.3-101, et seq., as amended.

2.10 Executive Board. Executive Board shall mean the governing board of the Association elected by the Owners to operate, maintain and manage the Condominium.

2.11 First Mortgage or Deed of Trust. A security interest on a unit which has priority over all other security interests on the unit.

2.12 General Common Elements or Common Elements. General Common Elements or Common Elements means all of the Project except the Units.

2.13 Land. Land means the real property described on attached **Exhibit A.**

2.14 Limited Common Elements. Limited Common Elements means common elements reserved for the use of less than all of the Units. All such areas are shown on the Map as Limited Common Elements and allocated thereby to the appropriate Unit or Units.

2.15 Managing Agent. Managing Agent shall mean the person or entity employed by the Association to perform the obligations of the Association relative to operation, maintenance and management of the Condominium.

2.16 Map. Map means the survey and drawings prepared by Norman C. Whitehead, Colorado L.S. No. 27739, entitled Map of Meadow Vista Condominiums and filed for record with the Clerk and Recorder of the County of Gunnison, Colorado, on October 5, 2006, Reception No. 1169750, which reflects the legal description and location of the Land and all Units.

2.17 Owner. Owner means any person, persons, partnership, corporation, limited liability company or other entity or any combination thereof owning all or part of the fee simple title to a Unit. In the event a Unit is owned by more than one person or entity, (a) such Owner shall designate in writing one person or entity and their address to represent such Owner and receive notices and (b) liability for all obligations created by this Declaration shall be joint and several. Upon the failure of an Owner to so designate one person or entity, the Association shall be deemed to be the agent for receipt of notices to such Owners.

2.18 Owner's Agent. Owner's Agent means members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenant, or the agent, employee, invitee, licensee or tenant of the Unit Owner's tenant.

2.19 Project. Project means the Land and the Buildings and all improvements and structures thereon, together with all rights, easements, and appurtenances belonging thereto, submitted to condominium ownership by this Condominium Declaration and which may be subsequently submitted to condominium ownership under the terms of this Condominium Declaration or any supplemental declaration as is hereinafter provided.

2.20 Votes and Percentage of Owners. Whenever in this Declaration a vote of Owners is required or permitted, each Owner shall be entitled to the voting percentage set forth on attached **Exhibit B**. Whenever in this Declaration reference is made to a percentage of Owners such percentage shall mean the aggregate voting percentage of the Owners voting or represented.

III

GRANT AND SUBMISSION

3.1 Grant and Submission. Declarant hereby grants and submits to condominium ownership all of the Land, the Buildings thereon, and the improvements related or incidental thereto as located upon the Land.

3.2 Conveyance of Fixtures. Declarant hereby grants and submits to condominium ownership all of the equipment, supplies, materials, and other property which are affixed to the Land or the improvements appurtenant thereto.

3.3 Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to each Unit are set forth in **Exhibit B**. The interests allocated to each Unit have been calculated as follows:

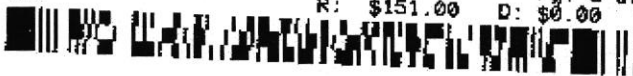
- (a) the undivided interest in Common Elements, on the basis of number of Units within the project;
- (b) the percentage of liability for Common Expenses, on the basis of number of Units within the project; and
- (c) the number of votes in the Association, on the basis of number of Units within the project.

IV

OCCUPATION AND USE

4.1 Division of Condominium into Units. The Condominium is divided into eight (8) fee simple estates known as Condominium Units which are shown on the Map.

4.2 Easements for Encroachments of Common Elements and Apartment Units. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of the Buildings, or if any such encroachments shall occur hereafter as a result of



settling or shifting of the Buildings, or for any other reason, valid easements shall exist for such encroachments and for the maintenance of the same so long as the Buildings shall exist. In the event the Buildings or any part thereof shall be rebuilt, and if encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements exist due to such rebuilding, valid easements shall exist for such encroachments and the maintenance thereof so long as the Buildings shall exist.

4.3 Conveyance of Condominium Units. Each Unit and the undivided ownership interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

4.4 Description of Condominium Units. Every deed, lease, mortgage, trust deed or other instrument shall legally describe a Unit by its number followed by the words "Meadow Vista Condominiums" with further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect a Unit, and such Unit's percentage of interest in the Common Elements.

4.5 Exclusive Possession and Use Restriction. Each Owner shall be entitled to exclusive ownership and possession of such Owner's Unit (including any fixtures appurtenant thereto) and exclusive possession and use of the Limited Common Elements allocated to his Unit. Each Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of other Owners. Subject to the provisions of Article XI, below, each Unit may be used or occupied in any manner consistent with the building and land use regulations of Gunnison County, Colorado, or other authority having jurisdiction thereof.

4.6 Right of Access and Emergency Repairs. The Association shall have the right of access to each Unit and its appurtenant Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of Common Elements, or at any time deemed necessary for the making of emergency repairs to prevent damage to the Common Elements or to the Unit or to another Unit.

4.7 No Partition. No Owner shall bring an action for partition of his Unit or of the Common Elements, or of the Land.

4.8 Right to Mortgage. Each Owner shall have the right from time to time to encumber his interest in his Unit by deed of trust, mortgage or other security instrument.

4.9 Combination of Units. In the event that one Owner shall own two adjacent Units, such Owner shall have the right to combine such Units into one area and to create entries, door openings and stairways between such Units, so long as such changes do not affect load-bearing walls or pipes, conduits, ducts, shafts and wiring for the utility services of the Building.

4.10 Leasing. Subject to the remaining provisions of this Section 4.10, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however that (a) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's rules are provided to the Lessee with the lease; (b) a Unit may be leased only for the uses provided herein; and (c) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. All leases shall be filed with the Association.

4.11 Neglect by Owner or Owner's Agents. If, due to the act or neglect of an Owner or Owner's Agents, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner and/or Owner's Agent shall be liable and responsible for the payment of same. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

V

**MEADOW VISTA
CONDOMINIUMS ASSOCIATION**

5.1 Owners Association. The administration of the Condominium shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of Meadow Vista Condominiums Association (Association), a Colorado

nonprofit corporation. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary or convenient to manage the business and affairs of the Condominium. An Owner of a Condominium Unit shall automatically become a member of the Association and shall remain a member for the period of his ownership. Except for members of the Executive Board appointed by Declarant during the period of Declarant control, all Executive Board members shall be elected by Owners of Units. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

5.2 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of: (a) five (5) years from the date of recording the Declaration, (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; (c) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (d) two (2) years after the right to add new Units was last exercised (if such right is reserved by Declarant in this Declaration). Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Gunnison County Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Under the Act, Declarant Control is further extinguished, to the extent stated, sixty (60) days after the following events: (a) Declarant conveys twenty-five percent (25%) of the Units that may be created to owners other than Declarant, to the extent of twenty-five percent (25%) of the members of the Executive Board (minimum of one), and (b) Declarant conveys fifty percent (50%) of the Units that may be created to Owners other than a Declarant, to the extent of thirty-three and one third percent (33 1/3%) of the members of the Executive Board.

5.3 Association Management. The Association shall conduct the general management, operation and maintenance of the Condominium and the Units and the enforcement of the provisions of this Declaration and of the Articles and Bylaws of the Association and rules and regulations adopted thereunder. The Association may assign its future income, including its rights

to receive Common Expense assessments, only by the written approval of the Owners of Units.

5.4 Association Budget. The budget shall be submitted to the Owners, pursuant to Section 303(4) of the Act. Common Expense assessments shall be due and payable annually or in periodic installments, or in any other manner. Common Expense assessments may begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

5.5 Notice to Unit Owners. Notice of matters affecting the Association, the Common Elements or other aspects of the project shall be given to Unit Owners by the Association or other Unit Owners in writing addressed to each Unit Owner at the address provided to the Association by each Unit Owner. If a Unit Owner has failed to provide an address, the Association shall use the address set forth in the deed or other instrument of conveyance recorded in the Gunnison County records by which the Unit Owner acquired title.

5.6 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

5.7 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

5.8 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. The Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of

the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be awarded reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees, in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

5.9 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Nonprofit Corporation Act.

5.10 Powers of the Executive Board. Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- (c) Hire and terminate management agents and other employees, agents and independent contractors;
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;
- (e) Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice;
- (f) Regulate the use, maintenance, repair, replacement and modification of Common Elements;

(g) Cause additional improvements to be made as a part of the Common Elements;

(h) Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) all Owners agree to that action, and (b) all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

(i) Grant easements, leases, licenses and concessions through or over the Common Elements;

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

(k) Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents.

(l) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

(m) Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive Assessments;

(o) Insure the furnished interior of all Units;

(p) Exercise any other powers conferred by the Declaration or Association Bylaws;

(q) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and