

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LOTS 5, 6, 7, 8, 9, 10, 11 and 12  
BARBEE FAMILY SUBDIVISION/PUD**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Lots 5, 6, 7, 8, 9, 10, 11 and 12, Barbee Family Subdivision/PUD (the "Declaration") is made as of September \_\_\_, 2002, by **SHADOW MOUNTAIN INVESTMENT, LLC**, a Colorado limited liability company (hereinafter the "Declarant").

**RECITALS**

A. Declarant owns certain real property located in the City of Aspen in Pitkin County, Colorado, described as **Lots 5, 6, 8, 9, 10, 11 and 12, BARBEE FAMILY SUBDIVISION/PUD**, according to the First Amended Final Plat of Lots 3 through 12, Barbee Family Subdivision/PUD recorded November 21, 2001 in Plat Book 59 at Page 22 as Reception No. 461107 in the office of the Clerk and Recorder of Pitkin County (the "Property").

B. Timothy Semrau owns **Lot 7, Barbee Family Subdivision/PUD** and by signing this Declaration hereby approves of and agrees to the covenants, conditions and restrictions created by the Declaration.

C. Declarant desires to subject the Property to these covenants, conditions and restrictions and other charges more specifically set forth herein for the purpose of protecting, benefitting and enhancing the Property and it is the Declarant's intent hereby that the lands governed by these covenants (the Property) be developed and maintained as a scenic and desirable residential area.

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. It is the purpose of these covenants that the high quality features and character of this residential area shall be protected and preserved for the residents of the Property and the neighborhood as much as possible.

**ARTICLE 2**  
**DEFINITIONS**

The following words when used in this Declaration shall have the following meanings:

Section 2.1     "*Association*" means the Trainor's Landing Condominium Association.

Section 2.2     "*Clerk and Recorder*" means the office of the Clerk and Recorder on Pitkin County, Colorado.

Section 2.3     "*City*" means the City of Aspen, Colorado.

Section 2.4     "*Common Elements*" means the common elements of the Trainor's Landing Condominiums, as defined and described in the Condominium Declaration and Condominium Map thereof as or to be recorded in the records of the Clerk and Recorder.

Section 2.5     "*Condominium Unit*" means a condominium unit in the Trainor's Landing Condominiums, as defined and described in the Condominium Declaration and Condominium Map thereof as or to be recorded in the records of the Clerk and Recorder.

Section 2.6     "*Declarant*" means Shadow Mountain Investment, LLC, a Colorado limited liability company.

Section 2.7     "*Declaration*" means this Declaration and any amendments and supplements thereto.

Section 2.8     "*Final Plat*" means the First Amended Final Plat of **BARBEE FAMILY SUBDIVISION/PUD** recorded November 21, 2001 in Plat Book 59 at Page 22 as Reception No. 461107 in the office of the Clerk and Recorder, depicting the Property. The Property as described and shown on the Final Plat is subject to this Declaration and any supplements and amendments thereto.

Section 2.9     "*Lot*" means each of Lots 5, 6 and 7, as depicted on the Final Plat.

Section 2.10    "*Owner*" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot or Condominium Unit, and "Owner" also includes the purchaser under a contract for deed covering a Lot or Condominium Unit with a current right of possession and interest in the Lot or Condominium Unit.

Section 2.11    "*Property*" means **Lots 5, 6, 7, 8, 9, 10, 11 and 12, BARBEE FAMILY SUBDIVISION/PUD**, according to the First Amended Final Plat of Lots 3 through 12, Barbee

Family Subdivision/PUD recorded November 21, 2001 in Plat Book 59 at Page 22 as Reception No. 461107 in the office of the Clerk and Recorder.

Section 2.12 "*Trainor's Landing Condominiums*" means the condominium common interest community to be created by Declarant on Lots 8, 9, 10, 11 and 12 of the Barbee Family Subdivision/PUD.

### ARTICLE 3 RESTRICTIONS ON USE

Section 3.1 *Trash and Rubbish.* Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner, and all trash containers shall be kept in a clean, sanitary condition. All rubbish and trash shall be regularly removed from a Lot or a Condominium Unit by the Owner, shall not be allowed to accumulate and shall not be burned on any part of the Property. An Owner of a Lot is responsible for removal of trash from his Lot. The Association is responsible, on behalf of the four Owners of the Condominium Units, for removal of trash from the Trainor's Landing Condominiums. No trash, litter, garbage, grass, shrub or tree trimmings, scrap refuse or debris of any kind shall be permitted to remain exposed upon any Lot or on the Trainor's Landing Condominiums so it is visible from any neighboring Lot, Condominium Unit or Common Elements or from the street except that any container containing such material may be placed outside on the day of garbage pickup. Any such containers shall be promptly removed and stored out of sight by the end of the same day as garbage pick-up occurs. All trash containers shall be stored inside an Owner's garage and shall not be stored outside.

The Declarant, during the period of construction by Declarant of homes on Lots 5, 6 and 7 and of the Condominium Units in the Trainor's Landing Condominiums, shall be exempt from and not subject to the requirements of this section.

Any of the Owners shall have the right but not the obligation, after ten days prior written notice to an Owner who is violating the provisions of this section (the "Owner in violation"), which notice must be signed by at least three of the Owners, to enter upon any Lot or the Trainor's Landing Condominiums and remove such trash or other unsightly objects and materials. The reasonable cost of such removal shall be chargeable to the Owner in violation by the Owner(s) accomplishing the removal.

Section 3.2 *Nuisances.* No noxious or offensive activity shall be carried on within the Property. No activity shall be conducted on any part of the Property which is or might be unsafe or hazardous to any person nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable

embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

Section 3.3 *Pets.* Owners, lessees or residents or occupants of the Property may have pets, such as dogs or cats belonging to the household of a Lot or a Condominium Unit, so long as such pets are disciplined and do not constitute an undue annoyance or health hazard to other Owners, residents or occupants of the Property and so long as they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Property. The keeping of pets shall be subject to the laws and regulations of the City and the provisions of this Declaration.

Whenever a pet is outside the pet shall be carried or be kept on a leash which is being held by th Owner or other person responsible for the pet. Pets are not permitted to run free on the property. If any pet is found running free on the property, it shall be subject to impoundment by the City's animal control officers.

Section 3.4 *Motor Vehicles.* No motorized vehicle which is either non-operational or non-licensed shall be kept or stored anywhere on the Property.

Section 3.5 *Temporary Structures or Residences.* No used or previously erected or temporary house, structure, house trailer or nonpermanent building or outbuilding shall be used or placed on any tract except a construction trailer may be placed on a Lot during construction periods.

Section 3.6 *Mobile Homes.* Mobile homes and modular homes shall not be permitted on any portion of the Property. All homes must be placed on a permanent foundation.

Section 3.7 *Hunting and Firearms.* Hunting on the Property is expressly prohibited. No firearms shall be discharged anywhere on the Property except in an emergency where necessary for the protection of persons or property.

Section 3.8 *Fences.* Fences are not allowed in the Barbee Family Subdivision/PUD except for a split rail fence that may be constructed by the City or by the Owners with the approval of the City on the exterior boundary line of the Barbee Family Subdivision/PUD where the boundary line is adjacent to City owned park property. No boundary or privacy fences between lots or on or next to interior lot lines in the Barbee Family Subdivision/PUD are permitted.

Section 3.9 *No Annoying Lights, Sounds or Odors.* No light shall be emitted from any portion of the Property which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Property except with the prior written approval of all of the Owners.

Section 3.10 *No Hazardous Activities.* No activity shall be conducted on any portion of the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue unit while attended.

Section 3.11 *No Unsightliness.* All equipment shall be enclosed within an enclosed structure, including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use. No clotheslines, wood piles or storage areas shall be located on any Lot or on the Common Elements so as to be visible from neighboring homes or Condominium Units, the Common Elements or from the street or adjacent alleyways. No types of exterior refrigerating, cooling or heating equipment or installations shall be permitted.

Section 3.12 *No Storage on Decks, Porches or Yards.* Decks or porches may not have any items of personal property stored on them except for lawn or deck chairs and related furniture in a neat, clean presentable condition and barbecue equipment in safe condition and good working order. Bicycles and other sports or recreational equipment may only be stored inside of the garages, Condominium Units or the houses on the Lots, or with regard to bicycles, in the designated bicycle storage areas.

Section 3.13 *Utilities.* All electric, television, radio and telephone line installations and connections from the Owner's property line to the home or other structures on a Lot or a Condominium Unit or any other structures on the Common Elements shall be placed underground.

Section 3.14 *Restrictions on Signs and Advertising Devices.* No sign, poster, billboard, advertising device or display of any kind except political campaign signs in compliance with local ordinances shall be erected or maintained anywhere within the Property except such signs as may be approved in writing by not less than five (5) out of the seven (7) Owners which may include signs indicating a home occupation if permissible by local ordinance, protection by security systems and Neighborhood Watch programs. One sign advertising a Dwelling on a Lot or Condominium Unit for sale or for lease is permitted; provided however, the dimensions, color, style and location of such sign shall be consistent with what is typical and customary for such sign with the City of Aspen and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

Notwithstanding the foregoing, reasonable signs, advertising or billboards used by the Declarant in connection with development of or construction of a home on a Lot or Condominium Unit shall be permissible.

Section 3.15 *Compliance with Laws.* No unlawful use shall be permitted or conducted within the Property. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

Section 3.16 *Vehicular Parking, Storage and Maintenance.* No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than one ton, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within the Property so any portion of it is visible from neighboring Lots or Condominium Units, Common Elements or from the street except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles".

No emergency or temporary parking or storage shall continue for more than seventy-two hours. Parking is not allowed on landscaped or lawn areas, parking is only allowed in garages or other designated parking spaces. The two designated guest parking spaces as shown on the Condominium Map of the Trainor's Landing Condominiums, as or to be recorded, are for the use of guests of the Owners/residents of the Lots or the Units. The designated "Guest Parking Spaces" shall not be used by a guest for more than seventy-two hours.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within the Property except in garages or except in emergencies. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one week or longer or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town.

Any Owner or the Trainor's Landing Condominium Association shall have the right to remove and store any vehicle that is parked or stored on the property in violation of this Section 3.16 after at least seventy-two hours prior notice to the Owner responsible for the vehicle in violation, the expenses of which shall be chargeable to and paid by the Owner of the vehicle in violation. No vehicle maintenance is allowed within the Property, except for the washing of vehicles as may be allowed by local ordinances or regulations.

#### ARTICLE 4 VOTING RIGHTS/REMEDIES

Section 4.1 *Votes.* Each Lot or Condominium Unit shall have one vote on any matters calling for a vote as specified in this Declaration.

Section 4.2 *Voting.* The Owner(s) of each Lot shall have one vote per Lot owned and the Owner(s) of each Condominium Unit shall have one vote per Condominium Unit owned. If more than one of the owners are present, the vote allocated to a Lot or a Condominium Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated without protest being made promptly to the other persons at the meeting by another owner of the Lot or Condominium Unit.

Section 4.3 *Rights of Action.* Each of the Owners shall have a right of action against the any of the other Owner's for the other Owner's failure to comply with the provisions of this Declaration. In any action covered by this section, any Owner shall have the right but not the obligation to enforce the provisions of this Declaration by any proceeding at law or in equity, or as set forth in this Declaration, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or litigation shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or litigation. Failure by any Owner to enforce compliance with any provision of this Declaration shall not be deemed a waiver of the right to enforce any provision thereafter.

## ARTICLE 5 EASEMENTS

Section 5.1 *Recorded Easements.* The Property shall be subject to the easements and those other matters as listed on **Exhibit "A"** to this Declaration, and all easements shown on the Final Plat and those of record and otherwise as set forth in this Article.

Section 5.2 *Utility Easements.* There are utility easements affecting the Property in those locations as may be designated on the Final Plat as utility easements which easements shall include easements for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, gas, telephone, cable TV, and electricity. These utility easements include future utility services not presently available to the Property which may reasonably be required in the future.

Section 5.4 *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

## ARTICLE 6 MAINTENANCE

Section 6.1 *Maintenance by Owners.* Each Owner shall maintain and keep in good repair and in a reasonably neat and clean condition, his Lot or Condominium Unit and any structures, or buildings or other improvements thereon.

Section 6.2 *Maintenance by Association.* The Trainor's Landing Condominium Association shall be responsible for the maintenance and repair of the Common Elements of the Trainor's Landing Condominiums. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all buildings, landscaping, walls, fences, gates, signage, irrigation systems, sidewalks, roads, driveways and improvements (which shall include without limitation snow removal services unless performed by another private

or public organization formed for such purposes) located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, the Owners of the Lots shall have the right, but not the obligation, to do so at the expense of the Association.

**ARTICLE 7**  
**PRIVATE ROAD AND GUEST PARKING**

side walks?

Section 7.1 *Allocation of Expenses/Agreement to Pay.* The owners of Lots 5, 6 and 7, Barbee Family Subdivision/PUD shall each pay 1/7 and the Association, on behalf of the owners of the Trainor's Landing Condominiums, shall pay 4/7 of the costs and expenses associated with the repair and maintenance, including snowplowing, of the private road known as Trainor's Landing and the two designated Guest Parking Spaces. Trainor's Landing may be referred to herein as the "Private Road" and the two designated Guest Parking Spaces may be referred to as the "Guest Parking." The repair and maintenance, including snowplowing, of the Private Road and the Guest Parking shall hereinafter be referred to as "Maintenance." The allocated shares of the costs of Maintenance of the Private Road and the Guest Parking shall be as follows:

<u>Property</u>	<u>Allocated Fractional Share</u>
Lot 5, Barbee Family Subdivision/PUD	1/7
Lot 6, Barbee Family Subdivision/PUD	1/7
Lot 7, Barbee Family Subdivision/PUD	1/7
Trainor's Landing Condominium Association	4/7

The Association's share of these expenses, pursuant to the terms of the Condominium Declaration of Trainor's Landing Condominiums, is a common expense of the Association and shall be paid for by the Owners of the Units of Trainor's Landing Condominiums pursuant to the terms and provisions of the Condominium Declaration of Trainor's Landing Condominiums.

Section 7.2 *Association Responsible for Maintenance and Repair.* The Association shall be responsible for arranging for and hiring such contractors as may be necessary for Maintenance of the Private Road and Guest Parking provided however, that before the Association hires a particular contractor, the Association shall consult with and receive the approval of at least four out of seven of the Owners of Lots and the Condominium Units with regard to the hiring of that particular contractor. The Private Road and Guest Parking shall be maintained in good repair at all times and shall be snowplowed at least as often as upon the occurrence of any snowfall in excess of 4 inches.

Section 7.3 *Association to Invoice Individual Lot Owners.* The Association shall be responsible to prepare and send invoices to the Owners of Lots 5, 6 and 7, for an Owner's share of the costs incurred in the Maintenance of the Private Road and Guest Parking. The Association shall send the invoices to the Lot Owners not more often than monthly and not less often than annually. The Association shall send the invoices and any other notices desired to be given hereunder to the Lot Owners at the address for a Lot Owner as shown by records of the Assessor's Office of Pitkin County, Colorado, unless another address has been supplied to the Association by a Lot Owner.



Section 7.4 *Lot Owners Obligation to Pay/Lien Rights.* Each Lot Owner shall be responsible to pay the invoices received from the Association upon receipt. In the event an Lot Owner fails to pay an invoice within 30 days of receipt thereof, the amount due as shown by the invoice plus interest and costs as provided for herein shall constitute a lien against the Lot for the benefit of the Association unless and until the amounts due are paid in full. In this regard the Association's lien rights against the Lot shall be the same as the Association's lien rights against the Units in Trainor's Landing Condominiums as provided for in the Condominium Declaration for the Trainor's Landing Condominiums and the Colorado Common Interest Ownership Act (C.R.S. Section 38-33.3-101 et. seq.). These rights include but are not limited to the priority of the lien, the right to foreclose the lien, the right to collect interest on all unpaid amounts at the interest rate as provided for herein, the right to collect all costs and expenses, including reasonable attorney's fees incurred in the enforcement of the lien and the collection of the amounts due, and such other rights associated with the lien as may be provided for herein. Additionally, the Association shall have the right to collect any and all sums due from an Lot Owner by a civil action against an Lot Owner in any court of competent jurisdiction in Pitkin County, Colorado.

Section 7.5 *Association's Failure to Perform.* In the event the Association fails to perform the Maintenance of the Private Road and Guest Parking or fails to perform the maintenance required by Section 6.2 of this Declaration, then any of the Lot Owners shall have the right to perform the Maintenance of the Private Road and Guest Parking or the maintenance required by Section 6.2 of this Declaration; and, in such event, the Lot Owner shall invoice the Association for the Association's share of the costs. In the event the Association fails to pay its share of the costs within thirty days of its receipt of its invoice therefore, then the Lot Owner paying the cost shall have the same rights to collect the monies due, including the right to collect interest, the right to claim a lien and the right to commence suit for collection of said monies as are provided as in Section 7.4 and 7.6 herein for the Association to collect said sums. A Lot Owner shall send invoices and any other notice deemed to be given hereunder to the mailing address of the Condominium Unit owner who is the president of the Association as found in the Association's books and records, or if such address is not made available to a Lot Owner, to the Registered Agent of the Association at the address of the Registered Agent as found in the records of the Colorado Secretary of State.

Section 7.6 *Interest.* Interest shall accrue on any unpaid amounts hereunder at the rate of eighteen percent (18%) per annum provided that no party shall have the right to collect and assess interest unless said amounts due are not paid within thirty days of a party's receipt of an invoice therefore.

Section 7.7 *Damages Caused by Individuals.* In the event, due to the act or neglect of the Association or an Owner or such Owner's guests of a Condominium Unit in Trainor's Landing Condominiums, loss or damage is caused to the Private Road or Guest Parking, then the Association shall be liable and responsible for payment of same. The Association shall have the right to collect and recover such damages from the Owner of a Condominium Unit causing such damages as provided for in the Declaration. In the event due to the act or neglect of a Lot Owner or such Lot Owner's guests, loss or damage is caused to the Private Road or Guest Parking, then the Lot Owner shall be liable and responsible for payment of same. The amount of such loss or damage, together with interest, costs of collection, and reasonable attorneys fees and costs, may be collected, as the

case may be, by a party in accordance with the collection rights set forth herein. Before pursuing any such collection rights however, the party seeking payment shall send an invoice stating the amount due to the party causing the loss or damage and said party causing said loss or damage shall have thirty days from receipt of the invoice to make payment or otherwise resolve the matter.

## ARTICLE 8 DESIGN REVIEW

No alteration or additions to the Common Elements of Trainor's Landing Condominiums or to any portion of Lot 12, Barbee Family Subdivision/PUD shall be made unless first approved in writing by not less than six of the seven Owners of the Lots and the Condominium Units. The Owners shall exercise reasonable judgment to the end that all modifications shall conform to and harmonize with existing surroundings and structures. An Owner has the absolute right to disapprove any requested changes which an Owner reasonably determines do not conform to and harmonize with existing surroundings and structures or which would disrupt or diminish the high quality and character of the Property.

## ARTICLE 9 DURATION OF COVENANTS AND AMENDMENT

Section 9.1 *Term.* The covenants and restrictions of this Declaration shall run with and bind the land for twenty years and shall be automatically extended for successive twenty year periods, unless an instrument is signed revoking or terminating this Declaration pursuant to the provisions of Section 9.3 of this Declaration.

Section 9.2 *Amendment.* This Declaration, or any provision of it, may be amended at any time by Owners holding not less than six of the seven of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. To be effective any amendment must be executed by at least six of the seven Owners which shall then be recorded in the office of the Clerk and Recorder certify the approval of a sufficient number of Owners of the amendment.

Section 9.3 *Revocation.* This Declaration shall not be revoked and the covenants, conditions or restrictions created hereby be terminated without (a) the written consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder and (b) the written consent of at least sixty-seven percent (67%) of first mortgagees of the Lots and the Condominium Units subject to first mortgages (which percentage is measured by votes allocated to such Lots and Condominium Units).

## ARTICLE 10 GENERAL PROVISIONS

Section 10.1 *Enforcement.* Except as otherwise provided in this Declaration, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions,

conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In the event an Owner violates the restrictions contained in Sections 3.1 or 3.16 of this Declaration (the violating Owner) and fails to cure such violating within the time period provided for cure as provided for in this Declaration, and thereafter an Owner incurs expenses as authorized by this Declaration to remedy the violation (the remedying Owner) then, in such event, the remedying Owner shall invoice the violating Owner for the amount of the expenses incurred by the remedying Owner. In the event the violating Owner fails to reimburse the remedying Owner for these expenses within thirty days of violating Owner's receipt of the invoice therefore, then the remedying Owner shall have the same rights to collect the monies due, including the right to collect interest as provided for in Section 7.6 above, and the right to claim a lien and the right to commence suit for collection of said monies as are provided for in Section 7.4 above for the Association to collect sums owing to it. An Owner shall send invoices and any other notice deemed to be given hereunder to the mailing address of the violating Owner as found in the records of the Assessor's Office of Pitkin County, Colorado.

Section 10.2 *Severability*. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 10.3 *Perpetuities*. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Larry Saliterman or Timothy Semrau.

Section 10.4 *Notices*. Notices as desired or required hereunder shall be in writing and deemed effective from and after the expiration of three (3) days after deposit in the United States Mail, postage prepaid, certified mail, return receipt requested, or on delivery by courier (or delivery service such as FedEx, Airborne or UPS) to the address of the Lot Owner or Condominium Unit Owner as found in the records of the Assessor's office of Pitkin County, Colorado. Notices also may be personally served, and shall be deemed effective on delivery.

Section 10.5 *Miscellaneous*. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and shall run with the lands described herein. An Owner of the real property described herein shall be deemed to have consented to and accepted the benefits and burdens of this Declaration upon the acceptance and recordation of deed or any other transfer of title of the real property.

IN WITNESS WHEREOF, Declarant and Semrau have executed this Declaration as of the date first above written.

DECLARANT:

SEMRAU (as the Owner of Lot 7, Barbee Family Subdivision/PUD):

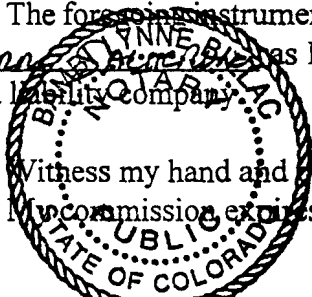
SHADOW MOUNTAIN INVESTMENT, LLC  
a Colorado limited liability company

By:  Its Manager


  
Timothy Semrau

STATE OF COLORADO )  
) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of Sept, 2002, by Laura A. Semrau as Manager of SHADOW MOUNTAIN INVESTMENT, a Colorado limited liability company.



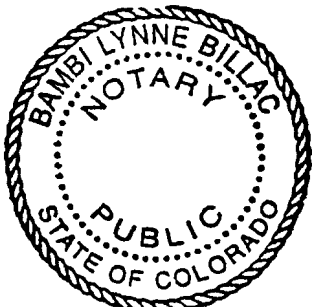
Witness my hand and official seal.  
My commission expires: 7-2-2005

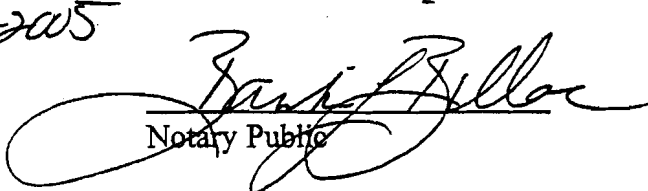
  
Notary Public

STATE OF COLORADO )  
) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of Sept, 2002, by Timothy Semrau as the owner of Lot 7, Barbee Family Subdivision/PUD.

Witness my hand and official seal.  
My commission expires: 7-2-2005



  
Notary Public

## **EXHIBIT A**

### **Easements and Other Matters of Record**

1. Mineral reservations in United States Patent recorded August 26, 1949 in Book 175 at Page 298.
2. Resolution of the Growth Management Commission recorded June 21, 1999 as Reception No. 432438 as Resolution No. 99-01GMC.
3. Resolution of the Aspen Planning and Zoning Commission recorded June 21, 1999 as Reception No. 432442 as Resolution No. 99-07.
4. Ordinance No. 11, Series of 1999 by Aspen City Council recorded August 2, 1999 as Reception No. 433968.
5. Ordinance No. 12, Series of 1999 by Aspen City Council recorded December 6, 1999 as Reception No. 438299.
6. Easements, rights of way and all matters as disclosed on Plats of subject property recorded December 6, 1999 in Plat Book 51 at Page 85 (Annexation Plat) and Plat recorded December 6, 1999 in Plat Book 51 at Page 86 (Subdivision Plat).
7. Remediation Agreement recorded December 6, 1999 as Reception No. 438301.
8. Subdivision/PUD Agreement recorded December 6, 1999 as Reception No. 438302.
9. Terms, conditions, provisions and obligations as set forth in Pretapping Agreement recorded June 6, 2002 as Reception No. 468474. (Affects Lots 3 and 4)
10. Easements, rights of way and all matters as disclosed on the First Amended Final Plat of Lots 3 through 12, Barbee Family Subdivision/PUD, recorded November 21, 2001 in Plat Book 59 at Page 22 as Reception No. 461107.

ALL BOOK AND PAGE AND RECEPTION NUMBER REFERENCES ARE TO THE RECORDS OF THE OFFICE OF THE CLERK AND RECORDER OF PITKIN COUNTY, COLORADO.