

WHEN RECORDED RETURN TO:

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
TAHOE-RENO INDUSTRIAL CENTER**

COMPARED

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**EXHIBITS**

Phase One Property .....	"A"
Annexation Property .....	"B"
DP Property .....	"C"

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
TAHOE-RENO INDUSTRIAL CENTER**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 1998, by **TAHOE-RENO INDUSTRIAL CENTER, LLC**, a Nevada limited liability company; **NORMAN INVESTMENTS, LLC**, a California limited liability company; **SSI PROPERTIES**, a California corporation; and **SOUTH MEADOWS PROPERTIES LIMITED PARTNERSHIP**, a Nevada limited partnership (collectively the "Declarant").

**RECITALS:**

A. Declarant is the owner of certain real property located in the County of Storey, State of Nevada. Declarant intends to develop the Property in phases. The real property described in Exhibit "A" attached hereto and incorporated herein by this reference shall be referred to as the "Phase One Property". The Phase One Property, including the DP Property as provided in Section 2.9, together with any other real property which is hereafter made subject to this Declaration pursuant to Article 13 hereof is hereinafter referred to as the "Property". Declarant may, but shall not be so obligated, add real property to the real property which is covered by this Declaration. As of the date of this Declaration, Declarant contemplates that the real property described in Exhibit "B" will be so added at some future date; however, Declarant makes no representation or warranty as to any such annexable land and reaffirms that annexed land, if any, may be more or less than that described in Exhibit "B" and may be different land all together.

B. Declarant intends to develop the Property as a multiple purpose industrial center which will be known as the "Tahoe-Reno Industrial Center". The Property is envisioned to include land devoted to, without limitation, industrial, heavy industrial, light industrial, warehousing and distribution, office and commercial uses. The Property is also envisioned to include, without limitation, common areas (including park and recreation areas) and public facilities.

C. Declarant may, in its sole and absolute discretion, convey title or lease portions of the Property to certain persons or entities; provided, however, that it is the express intention of Declarant that all of the Property, whether conveyed absolutely or subject to a leasehold estate, shall at all times be subject to the covenants, conditions and restrictions hereinafter set forth and all other terms and provisions of this Declaration, as amended or otherwise modified from time to time.

D. Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof for purposes of creating a general scheme for the improvement, development, use, occupancy and enjoyment thereof, all to insure the proper development and use of the Property and to enhance and protect its value, desirability and attractiveness as a viable industrial park; and more particularly, without limitation, to:

1. protect the Owners and Occupants of Lots against such improper or inappropriate development and use of surrounding Lots as may depreciate the value and use of their Lots;
2. prevent the erection on the Property of structures constructed of improper or unsuitable materials, or with improper quality and methods of construction;
3. insure reasonably consistent development of the Property;
4. encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function;
5. provide access to Lots, adequate parking and loading facilities;
6. insure adequate funding for construction, maintenance, care and repair of Common Areas;
7. provide for the ownership and maintenance for the common benefit of all Owners and Occupants of open space, landscaped entries, drainage ways, Railroad Areas, Streets and other Common Area; and
8. generally promote the welfare and safety of the Occupants and Owners of Lots.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interests in the Property, as the same may from time to time appear or develop, shall be held and conveyed or leased (as applicable) subject to the following covenants, conditions and restrictions, which are hereby declared to be for the benefit of said interests in the Property and the owners or lessees of said interests, together with their permitted successors and assigns, if any. These covenants, conditions and restrictions shall run with said interests and shall be binding upon all parties having or acquiring any right or title of any nature whatsoever in said interests or any portion thereof, and shall inure to the benefit of each owner or lessee thereof and are imposed upon said interests and each of them as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

## **ARTICLE 1 - GENERAL PROVISIONS**

### **1.1 Restrictions Operate as Covenants.**

Each person or entity that acquires any interest in the Property or any portion thereof hereby covenants and agrees with Declarant (and its successors and assigns, if any) to use the Property only in accordance with the covenants, conditions and restrictions herein set forth and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration.



1.2 Intent of Restrictions and Covenants.

The intent of this Declaration is to insure proper development and use of the Property, to protect the Owner or Occupant, present or future, of each Lot established (or to be established) therein against improper development and use of other Lots in such a manner as to cause the value of any Lot to depreciate or become impaired in value; to prevent Improvements that are inconsistent with Declarant's overall development scheme; and, in general, to provide for a high quality of improvement of the Property in accordance with Declarant's overall development scheme.

1.3 Enforcement.

It shall primarily be the responsibility of the Association to enforce the terms and provisions of this Declaration as required. Notwithstanding the generality of the foregoing, each and every Owner and Occupant shall retain such enforcement rights as permitted or allowed in accordance with this Declaration as against other Owners or Occupants, or any of them.

1.4 Definitions.

Unless the context of this Declaration clearly indicates otherwise, capitalized terms or phrases found in this Declaration shall have the following meanings:

1.4.1 "Architectural Committee" or "Committee" shall mean the Architectural Committee created pursuant to Article 2 of this Declaration.

1.4.2 "Assessments" shall mean Regular Assessments and Special Assessments, as applicable.

1.4.3 "Association" shall mean the TRI Owners Association established pursuant to Article 2 of this Declaration.

1.4.4 "Board" shall mean the board of directors (also sometimes called the Executive Board) of the Association.

1.4.5 "Building" shall mean any structural improvement on any Lot which is enclosed by exterior walls, floor or roof and is designed for business activities by the Owner of such Lot, or such Owner's Occupants, licensees, tenants, successors or assigns, and all extensions thereof, including, without limitation, garages, outside platforms or docks, carports, outbuildings (unattached), canopies, enclosed malls and porches.

1.4.6 "Common Expenses" shall mean the actual and estimated costs of:

- (a) improvements, maintenance, irrigation, utilities, management, operation, reserves, repair and replacement of landscaping, recreation, open space, Streets, Railroad Areas, drainage facilities, joint use and related improvements to all Common Areas (e.g., related improvements may include work out stations, clock towers, art objects, sculptures, water features and signs),

provided that improvement construction of Streets, Railroad Areas, drainage facilities and landscaping in Common Area shall be the obligation of Declarant prior to dedication of said improved Common Area to Association;

- (b) unpaid Assessments until such time as said unpaid Assessments are collected, whereupon amounts so collected shall be credited to Assessments thereafter levied pursuant hereto;
- (c) reasonable, normal and customary costs of management and performance of Association duties and obligations hereunder, including, but not limited to, compensation paid to managers, accountants, consultants, attorneys, contractors, employees, and members of the Architectural Committee;
- (d) the reasonable costs of any insurance obtained by Association including, without limitation, public liability insurance, fidelity coverage, casualty, errors and omissions, and other forms of insurance generally obtained by persons or firms performing functions similar to those performed by the Association;
- (e) reasonable reserves as deemed appropriate by Association;
- (f) any costs or expenses incurred with respect to the operation, maintenance, repair or replacement of any monument sign or signs not owned by Owners, Occupants or others erected at entrances to the Property;
- (g) other reasonable expenses incurred by the Association in connection with maintenance, management, operation, improvement or repair of the Common Areas, or in the furtherance of the purposes of this Declaration or in the discharge of any duties or powers of Association herein described; and
- (h) the cost of any other services which Association determines is desirable for the benefit of the Property and the Owners and Occupants, including, without limitation, installation and maintenance of streets, utilities, drainage facilities, snow removal, and landscaping service.

1.4.7 "Common Areas" shall mean and refer to those areas of land shown on any recorded plat or its equivalent of the Property (or any portion thereof) filed or approved by Declarant and identified thereon as "Common Area(s)", or as land subject to a Common Area easement of maintenance or use by the Association, or any interest in land within the Property owned by Association.

1.4.8 "Common Maintenance Areas" shall mean those portions of the Property reserved or set aside for the purpose of, without limitation, planting, locating, installing, replanting, relocating, reinstalling, maintaining, removing, treating, repairing, and irrigating trees, hedges, shrubs, bushes, plantings, plants, grass, flowers, and other forms of vegetation (including natural vegetation) which, in the sole discretion of the Declarant or Architectural Committee, is necessary to design, create and

maintain attractive areas of vegetation throughout the Property in furtherance of the purposes of this Declaration.

1.4.9 "County" shall mean the County of Storey, a political subdivision of the State of Nevada.

1.4.10 "Developable Acreage" shall mean land within the Property owned by a Member on which development of land is customarily feasible and allowed by applicable local, state and federal law (e.g., land on which any structure, parking lot, landscaping or other ancillary use to a commercial or industrial property can be located). Generally, all portions of Lots specifically parceled for development within the Property, excluding Common Area, shall be considered Developable Acreage. Undeveloped land owned by Declarant which has slopes in excess of 15%, flood plain, wetlands, drainageways or other constraints which make said undeveloped land customarily infeasible to be developed shall not be considered Developable Acreage.

1.4.11 "Front", "Side", and "Rear" of Lots and Sites shall have the following meanings: the Front of a Lot or Site, except a corner Lot or Site, is the portion thereof facing on any Street. A Lot or Site may have two Fronts where, for instance, it faces onto two parallel Streets. A corner Lot or Site is a Lot or Site which is located at the intersection of two Streets. As to corner Lots or Sites, the narrowest frontage of a Lot or Site facing the Street is the Front, the longest side facing the intersecting street is the Side, irrespective of the direction in which the structures face. The Side of a Lot or Site also is the portion thereof which does not face on any Street and is not the Rear of the Lot or Site. The Rear of a Lot or Site is the portion thereof facing away from the Front of such Lot or Site, provided that such area also does not front on a Street.

1.4.12 "Ground Cover" shall mean shrubs planted in such a manner that selected portions of the Property are covered with foliage.

1.4.13 "Improvement" shall mean structures of any kind, above, on or below the land surface, including, without limitation, Buildings, walls, all utilities lines and facilities, parking facilities, private driveways and streets, walkways and sidewalks, fences, poles, loading areas, railroad tracks and related improvements and other structures of any type whatsoever, Landscaping, and Signs. This term shall include both original improvements and all subsequent changes and improvements thereto.

1.4.14 "Inorganic Mulch" shall mean decomposed granite, rock or river washed cobble used to completely cover selected portions of the Property.

1.4.15 "Landscaping" shall mean selected portions of the Property covered by Lawn (as defined below), Ground Cover or Inorganic Mulch combined with shrubbery and trees which may be complemented with berms, masonry, fencing or other materials.

1.4.16 "Lawn" shall mean selected portions of the Property completely covered with grass, which is properly maintained and irrigated.

1.4.17 "Lot" shall mean a parcel that is eligible for separate transfer of ownership pursuant to the filing of a map (or maps) for land subdivision purposes in accordance with applicable laws of

the State of Nevada and local governmental entities (including, without limitation, those of Storey County, Nevada) or by any other procedures permitted or required by such applicable laws.

1.4.18 "Member" of the TRI Owners Association shall have the meaning set forth in Section 2.1 of this Declaration.

1.4.19 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot.

1.4.20 "NRS" shall mean the Nevada Revised Statutes, as amended, adopted, or otherwise altered or changed from time to time by the Nevada legislature.

1.4.21 "Occupant" shall mean one or more persons or entities that have a legal right to occupy any portion of the Property (or Buildings or Improvements located thereon) pursuant to fee ownership, a leasehold interest or any other valid and enforceable legal relationship.

1.4.22 "Owner" shall mean one or more persons or entities who are the record owner of fee simple title of a Lot, or the vendee under an installment land sales contract with respect to such Lot, but excluding those having any such interest merely as security for the performance of an obligation. In the event that the ownership of any Building or other Improvement on any Lot shall ever be severed from the land, whether by lease or by deed, only the owner of the interest in the land shall be deemed an Owner hereunder. An Owner shall not necessarily be an Occupant. The Owner of fee title of a Lot and not the lessee of such Lot shall be deemed the Owner with respect to such Lot, regardless of the provisions of the lease.

1.4.23 "Property" shall have the meaning set forth in Recital A of this Declaration.

1.4.24 "Railroad Area" shall mean the area(s) on the Property owned by Declarant, a railroad company or the Association or in which Declarant, a railroad company or the Association has a railroad right-of-way easement; and which have been designated by Declarant or the Association as an area in which railroad tracks are or may be installed that will provide "lead tracks" (meaning tracks leading into and through the Property from the primary railroad tracks of railroad companies with tracks adjacent to the Property) into which abutting Owners can connect "spur tracks" (meaning tracks leading from such lead track into an individual Lot to provide rail service to that Lot). Railroad Areas do not include Single User Railroad Tracks.

1.4.25 "Railroad Area Assessment" shall have the meaning set forth in Section 6.13 of this Declaration.

1.4.26 "Railroad Area Users" shall have the meaning set forth in Section 6.13 of this Declaration.

1.4.27 "Regular Assessment" shall mean the amount to be paid to the Declarant by each Owner for such Owner's annual share of Common Expenses.

1.4.28 "Sign" shall mean any structure or device, electric or non-electric, permanent or temporary, and all parts thereof which are erected or otherwise used within the Property for advertising purposes.

1.4.29 "Single User Railroad Tracks" shall mean those spur tracks or lead tracks leading from the primary railroad tracks adjacent to the Property into a single Lot for providing rail service only to that Lot.

1.4.30 "Site" shall mean all contiguous Lots owned by the same Owner (or owned in common by two or more Owners) which the Owner(s) thereof have requested Declarant to consider as a single building site in reviewing for approval of plans and specifications for the development of such Lots in accordance with this Declaration; provided, however, that occupancy of a Building on two or more Lots by two or more Occupants shall not alter the character of such Lots as a single Site.

1.4.31 "Special Assessment" shall have the meaning set forth in Section 6.6 of this Declaration.

1.4.32 "Street" shall mean a vehicular right-of-way owned by the Association, public streets or highways, whether presently constructed, dedicated by plat map, or contemplated in the future pursuant to any plan approved or adopted by Declarant or any public authority, including, without limitation, Storey County, Nevada or the Nevada Department of Transportation.

## 1.5 Exemption From NRS Chapter 116.

The Property is expressly hereby declared exempt from Nevada Revised Statutes Chapter 116, the Common-Interest Ownership Act, despite the specific incorporation of certain provisions thereof as provided in Section 6.12.

## ARTICLE 2 - TRI OWNERS ASSOCIATION

### 2.1 Membership.

Each and every person or legal entity who is an Owner of a Lot in the Property shall automatically be a Member of the Association, provided that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a Member. Membership is mandatory.

### 2.2 Classes of Voting Members.

The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all those Members described in Section 2.1 hereof with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each one (1) acre of Developable Acreage owned within the Property. Partial increments of one (1) acre shall entitle a Member to fractional voting rights. If any property interest, ownership of which entitles the Owner

thereof to vote, is held jointly or in common by more than one (1) person, the vote or votes to which such property interest is entitled may also be held jointly or in common in the same manner. However, the vote or votes for such property interest shall be cast, if at all, as a unit, and neither fractional votes nor split votes shall be allowed. In the event that the persons who constitute an Owner are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their vote or votes on the matter in question. Any person who constitutes part of an Owner shall be entitled to cast the vote or votes for that Owner unless another person who constitutes part of that Owner shall have delivered to the Secretary of the Association before the vote a written statement to the effect that the person wishing to cast the vote or votes has not been authorized to do so by the other persons who constitute part of the Owner.

CLASS B. The Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each one (1) acre of Developable Acreage owned within the Property. A partial increment of one (1) acre shall entitle the Member to fractional voting rights.

### 2.3 Assignment.

Class A voting rights may be assigned, in whole or in part, as such rights relate to a particular Lot, to an Occupant, provided that written notice of the assignment is given to Association prior to the exercise of voting rights by the Occupant. Class B and C voting rights may only be assigned concurrently with the assignment of Declarant rights held by the assignor, and only to the extent of the portion of the Property owned by the assignor for which said Declarant rights are assigned.

### 2.4 Powers Conferred by Corporate Law.

In addition to any powers described herein, the Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly described in this Declaration, the Association Articles of Incorporation, or its Bylaws. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Nevada or by this Declaration.

### 2.5 Association Establishment and Purpose.

2.5.1 Establishment. The Association shall be created by Declarant as a nonprofit Nevada corporation. The Association shall be created for the purposes, charged with the duties, and invested with the powers prescribed by law or described in its Articles of Incorporation, Bylaws and in this Declaration. Neither the Articles of Incorporation nor the Bylaws of the Association shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the terms of this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control.

2.5.2 Purpose. The purpose of the Association shall be to:

- (a) Own and maintain all easements and deeded real property for Common Area within the Property; including without limitation the funding, operation and

maintenance of the following common elements: recreational and community facilities; lakes; parks; paths; sidewalks; trails; open space; fences; landscaping; gates; gatehouses; signs; entry ways; drainage ways and drainage facilities; private streets and curbs; private security, snow removal and storage areas, landscaping, fire and fuelbreaks, lighting, and surface water detention areas.

- (b) Provide for removal of ice and snow from Common Area streets and parking areas owned by the Association at any time when such a condition may restrain access within the Property. The Association shall either contract for snow and ice removal or acquire equipment and hire personnel to effect the provisions of this subsection. In the event that snow removal operations require exporting of snow or ice from roads or parking areas, said material may be exported outside the perimeter of the Property to a suitable location, said material may also be deposited within the perimeter of the Property on an appropriate easement, open area or Common Area in such a manner as to not unreasonably restrict access or create a unreasonable hazard to any road, parking area or common walkway.
- (c) Enforce and administer any provisions of this Declaration pertaining to Association's rights, obligations, powers and duties.

2.5.3 Purchase Of Equipment. The Association shall purchase any and all equipment, materials and supplies necessary to undertake its duties imposed by this Declaration, its Articles and Bylaws. The Association may purchase any equipment, materials and supplies from the Declarant provided the purchase price shall be the fair market value thereof.

2.5.4 Security Disclaimer. The Association may, but shall not be obligated, to maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, security personnel or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association and the Declarant, are not insurers or liable to any person for conduct resulting from acts of third parties.

## 2.6 Architectural Committee.

2.6.1 Designation of Committee. The Association shall have an Architectural Committee ("Committee"), which shall consist of not less than three (3) persons nor more than seven (7) persons who shall be natural persons, and who shall be appointed by the Board. The Committee members need not be Members and may be independent, paid consultants. Until December 31, 2018, the appointment of the members of the Committee must be approved by Declarant, and any and all





may, as a condition of its approval, specify a different construction timetable for commencement and completion of all of any phase of Improvement construction.

2.6.8 Prior Approval. Approval of plans and specifications by the Committee may be secured prior to acquisition of a Lot pursuant to the terms of a sale contract or lease.

2.6.9 Submittal and Inspection Requirements. Information shall be submitted to the Committee in connection with its consideration of any development plans as stated in the Committee's procedures and standards handbook. Inspections may also take place as specified in the handbook, but the Committee is not required to inspect Improvements.

2.6.10 Variances. The Committee in its sole discretion may grant variances to the provisions of the Article and the standards of approval due to undue hardship, extraordinary or exceptional circumstances, or if the granting of the variance will not significantly undermine or adversely affect the intent and purposes of this Declaration. No variances granted by the Committee shall be deemed to create a variance from (or right of noncompliance with) any applicable ordinance, law, rule or regulation of a governmental agency with jurisdiction.

## 2.7 Provision for Fines.

The Association and the Architectural Committee shall each have the right pursuant to the enforcement rights set forth in this Article and Article 10 hereof to assess fines, not to exceed \$1,000.00 for each occurrence, for any violation or failure to comply with the provisions of this Declaration, any rules or regulations authorized by this Declaration, or provisions of the Association Articles of Incorporation or Bylaws. Upon assessment of such fine pursuant to written notice thereof provided to an Owner or Occupant, such Owner or Occupant shall have thirty (30) days from receipt of such written notice to effectuate a cure or remedy for the violation (provided the violation is capable of remediation). If such cure or remedy is deemed complete and sufficient by the Association or Architectural Committee, as applicable, the fine shall be extinguished and written notice thereof shall be provided to such Owner or Occupant. Should such Owner or Occupant fail to effectuate a cure or remedy within the thirty (30) day period specified (or if the violation is not continuing and capable of remediation), the amount of such fine, together with interest on said fine pursuant to Section 10.3 hereof, shall be immediately due and payable and shall constitute a Special Assessment and lien upon such Owner's Lot until paid. If the fine is assessed for a continuing violation, payment of the fine does not excuse the violation and the Committee may fine again or avail itself of other enforcement rights, or both, in order to correct the violation.

## 2.8 Liability.

Neither the Declarant, the Association, the Architectural Committee or the members or designated representatives thereof shall be liable to (i) anyone submitting plans or specifications to them for approval, (ii) any Owner, or (iii) any other person or entity, in damages, loss or prejudice suffered or claimed on account of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, of (a) any plans or specifications, whether or not defective; (b) any construction or performance of any work whether or not pursuant to approved plans, drawings and specifications; (c) any improvement or

development of any property within the Property; (d) any execution and filing of a notice of non-compliance whether or not the facts therein are correct; or (e) any inspection or failure to inspect Improvements. Plans and specifications are not approved by the Architectural Committee for engineering design or adequacy. Every person who submits plans or specifications to the Architectural Committee for approval agrees, by submission of such plans and specifications, and every Owner agrees that he shall not bring any action or suit against the Declarant, the Association, the Architectural Committee or any of the members or designated representatives thereof to recover any damages for conduct of the Committee or its members described in this Section.

## 2.9 Assignment of Certain Committee Functions to DP Operating Partnership, L.P.

2.9.1 DP Property. DP Operating Partnership, L.P., a Delaware limited partnership, ("DP") has purchased from Declarant ±250 acres of the Phase One Property, as more particularly described in Exhibit "C", attached hereto (the "DP Property"). The DP Property shall be deemed Property for all purposes hereunder, subject to the provisions of this Section 2.9.

2.9.2 Assignment. Declarant hereby assigns and delegates to DP all functions of the Committee described in this Declaration, except as specified in Section 2.9.3 below, regarding all Committee functions, rights and obligations for the DP Property, and the Committee shall have no jurisdiction, right or responsibility for those Committee functions hereby assigned regarding the DP Property.

2.9.3 Exceptions to Assignment. The Committee shall review all plans and specifications related to Street access, utility design and placement, and Common Areas; and all provisions regarding Committee authority of Section 2.6 pertaining to these types of plans and specifications shall not be assigned hereby to DP.

2.9.4 Additional Design Guidelines. DP may impose for the DP Property additional or more restrictive design guidelines to the Design Guidelines promulgated by the Committee, which shall be enforced in addition to the Design Guidelines; provided that any conflicts between design guidelines of DP and the Design Guidelines shall be governed by the design guidelines of DP; provided however further that no design guidelines of DP regarding aspects of the plans and specifications over which DP is not assigned authority, as specified in Section 2.9.3, shall have any force and effect if in conflict with the Design Guidelines or decisions of the Committee pertaining to said plans and specifications.

## ARTICLE 3 - USE RESTRICTIONS

### 3.1 Permitted Uses.

No operation or use within the Property shall be permitted until the plans and specifications therefor have been submitted and approved in writing by the Architectural Committee pursuant to the procedures of Article 2. In order to maintain consistency and uniformity among various permitted uses contemplated for the Property, Declarant may (but shall not be under any obligation) group certain permitted uses together throughout the Property. By means of illustration only, research and

development operations or heavy industrial uses of different Owners may be strategically placed within a certain segment or portion of the Property.

Unless otherwise specifically prohibited herein, any industrial, distribution and warehousing, office or commercial use will be permitted if it falls within the range of contemplated permitted uses listed below, as determined in the sole and absolute discretion of the Architectural Committee. The Architectural Committee may restrict, control or prohibit any use or uses of any Lot subject to this Declaration which the Architectural Committee in its sole discretion deems to create a nuisance to adjacent Lots or which the Architectural Committee deems to be offensive or detrimental to any other property subject to this Declaration.

Contemplated permitted uses shall include the following:

- (a) assembly/manufacturing that takes place inside a Building;
- (b) distribution, warehousing or storage;
- (c) research and development;
- (d) office;
- (e) retail commercial;
- (f) public or civic uses;
- (g) day care or fitness centers;
- (h) parks and recreation; and
- (i) agricultural processing and sales.

### 3.2 Prohibited Uses and Development Covenants.

The following operations and uses are expressly prohibited on the Property:

- (a) any residential use, including, without limitation, mobile homes or trailer courts; except 24-hour watchmen/security associated with permitted uses on the Property;
- (b) any school (except properly licensed or approved day care facilities);
- (c) any industrial, commercial, or office use which is not authorized pursuant to the applicable zoning or land-use ordinances (or other entitlement permits/requirements) of Storey County, Nevada; or
- (d) any brothel or other business activity involving prostitution.

### 3.3 General Prohibitions and Covenants.

No use shall be permitted on the Property which is not allowed under applicable public codes, regulations and ordinances either already adopted or as may be adopted by the County or other applicable public authority. Each Owner, Occupant or other user of any portion of the Property at all times shall comply with this Declaration and the Design Guidelines and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, including, without

limitation, applicable zoning restrictions placed upon the Property as they exist from time to time. In some instances, governmental requirements may be more or less restrictive than the provisions of this Declaration and the Design Guidelines. In the event a conflict exists between any such governmental requirement and any requirement of this Declaration or the Design Guidelines, the more restrictive requirement shall prevail, except in circumstances where compliance with a more restrictive provision of the Declaration or the Design Guidelines would result in a violation of mandatory applicable governmental requirements, in which event those governmental requirements shall apply. Compliance with mandatory governmental requirements shall not result in the breach of this Declaration or the Design Guidelines even though such compliance may result in non-compliance of provisions of this Declaration or the Design Guidelines. Where a governmental requirement does not clearly conflict with the provisions of this Declaration or the Design Guidelines but permits action that is different from that required by this Declaration or the Design Guidelines, the provisions of this Declaration and the Design Guidelines shall prevail.

### 3.4 Spur Tracks.

No spur tracks shall be installed from a Lot to connect into lead tracks in a Railroad Area and no Single User Railroad Tracks shall be installed on a Lot unless and until such tracks shall have been authorized in writing by the Architectural Committee.

### 3.5 Fire Protection.

All Buildings shall be designed, constructed and maintained so as to comply fully at all times with any applicable public codes, ordinances, rules, regulations and orders relating to fire protection. All such Buildings and their associated ingress and egress from and to Streets and surface parking areas shall be so related to one another and arranged as to permit ease of access for fire and other emergency vehicles. Designated fire lanes within any Lot shall be so located, marked and protected from encroachment as to function effectively at all times. Appropriate signage, as required by applicable governmental entities and approved by the Architectural Committee, shall be installed for such fire lanes and maintained in readable condition.

### 3.6 Parking.

Each Owner or Occupant shall provide on its Lot adequate parking areas for employees, the disabled, visitors and service vehicles. No parking shall be permitted on Streets and on entrance driveways.

### 3.7 Signage.

No sign or other advertising device of any nature shall be placed on the Property except as approved by the Architectural Committee. Declarant or the Association shall have the right to install and maintain signs advertising the Property. No Owner or Occupant may use the name "Tahoe-Reno Industrial Center" or the "Tahoe-Reno Industrial Center" logo or mark in the name of any Building or in any advertisement or promotional material of any kind or nature whatsoever without first obtaining the prior written consent of Declarant.

### 3.8 Loading Docks and Areas.

Each Lot shall provide sufficient on-site loading facilities to accommodate Lot activities, and all loading movements, including, without limitation, turnarounds, shall be made off of Streets. Loading docks and areas and maneuvering areas shall be located on a Lot in accordance with the provisions of the Design Guidelines.

### 3.9 Landscaping.

Each Owner, contemporaneously with the development of Improvements on a Lot, shall install Landscaping on areas on its Lot in accordance with the Design Guidelines and subject to approval by the Architectural Committee. An Owner shall keep Landscaping in good condition and repair and in a neat and orderly appearance and shall be responsible for all expenses relating to the maintenance, repair or replacement of Landscaping on the Owner's Lot. Automatic underground irrigation systems shall be installed in all landscaped areas on a Lot. No changes shall be made to the Landscaping plan for a Lot without the prior written approval of the Architectural Committee.

### 3.10 Surface Water Flow and Drainage.

Plans for all dams, lakes, ponds, other water features or facilities of any kind and general Lot drainage must be submitted in advance for Architectural Committee approval. Each Owner shall control water runoff drainage from his Lot to prevent damage to adjacent tracts, Streets or any other area in the Property, pursuant to applicable County standards.

### 3.11 Trash and Garbage.

No Lot nor any portion thereof, shall be used or maintained as a dumping ground for rubbish, trash or garbage before, during or after the installation of any Improvements. Trash collection containers shall be situated as required by the Architectural Committee. Each Owner shall observe and comply with any and all requirements established by the Architectural Committee in connection with the storage and removal of trash and garbage. If within ten (10) days after the issuance of written notice by the Association to an Owner, said Owner shall have failed either to remove any trash, rubble or construction debris, or to exercise reasonable care or conduct to prevent or remedy a dangerous, unclean or unsightly condition, then the Association shall have the authority and right (but not the obligation) to go on the Lot for the purpose of cleaning said Lot or otherwise correcting said condition, or conditions. Should the Association undertake such corrective action on behalf of an Owner, it shall bill such Owner for the costs and expenses related thereto and if such bill is not paid within thirty (30) days, the amount thereof shall be a Special Assessment and constitute a lien upon the Lot and shall also be the personal obligation of the Owner of the Lot as set forth in Article 6 hereof.

### 3.12 Environmental Issues.

No Owner or Occupant of the Property or any portion thereof shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous

Substances (defined below) of any kind from, on, in, under or in the air above any part of the Property, including, without limitation, any surface waters or groundwater located on the Property, or into public sanitary sewer systems serving the Property without complying with all Environmental Laws (defined below) including, without limitation, performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. "Hazardous Substances" means those substances now or hereafter included within (whether as a result of such substance's inclusion on a list, physical characteristics or otherwise) any of the definitions of, without limitation, "hazardous substances", "hazardous waste", "hazardous materials", "pollutant", "contaminant" or "toxic substance" under, or otherwise regulated by, any Environmental Law; including, without limitation (i) mixtures containing listed Hazardous Substances and waste generated from the treatment, storage or disposal of Hazardous Substances; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) radioactive materials; and (v) petroleum (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquified natural gas and synthetic gas. "Environmental Laws" shall mean and include, without limitation, all present and future federal, state or local laws, rules, orders, ordinances and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation or transportation of Hazardous Substances, or any contamination, cleanup or disclosure related thereto, including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, Nev. Rev. Stat. ch. 459, Nev. Rev. Stat. ch. 444, Nev. Rev. Stat. ch. 445, Nev. Rev. Stat. ch. 590, Nev. Rev. Stat. Sections 618.750 through 618.850, inclusive, Nev. Rev. Stat. Section 477.045, the Uniform Fire Code, 1988 Edition, and such amendments as may be made to these statutes and such regulations as may be promulgated with respect thereto.

Each Owner and Occupant shall be responsible for and shall pay all costs and expenses related to the disposal or release by such Owner or Occupant of any Hazardous Substances, sewage or wastes of any kind in, on, under or in the air above the Property, which costs and expenses shall include, without limitation, closure, removal, remediation, cleanup, containment and other response costs, injuries to persons, damages to property (whether real or personal), legal expenses, and interest paid to any governmental entity; provided, however, that this covenant does not apply to Hazardous Substances generated on or migrating from other Lots or already existing on the Lot in question as of the date of the acquisition of such Lot by such Owner. The covenant in the immediately preceding sentence itself does not create any obligation of an Owner or Occupant other than for the payment of the costs and expenses described in such sentence, and no person has any rights under the covenant in such sentence to enforce any claim for any remedy against such Owner or Occupant other than for the payment or recovery of the costs and expenses described in such sentence.

### 3.13 Fuel Facilities.

Fuel storage and dispensing facilities may be installed on a Lot only after prior written authorization of the Architectural Committee has been obtained. The Owner of the Lot on which such facilities are installed shall be fully responsible for insuring that such facilities and their installation comply fully with all applicable laws and regulations, and the provisions of this Article.

### 3.14 Fences.

The use of fences on the Property is permitted only if such fencing complies fully with applicable provisions of the Design Guidelines, if any, and the Architectural Committee has approved of such fencing in writing.

### 3.15 Construction Standards.

3.15.1 Any builder, contractor, or subcontractor engaged to construct Improvements on any portion of any Lot may conduct its construction operations and activities and do all things necessary as required to expeditiously commence, continue and diligently complete construction of any such Improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and its agents must maintain an attractive, clean, nuisance-free environment during the period of construction. Declarant shall have the right to designate points of ingress and egress on the Lot and within the Property for construction vehicles, and each Owner of a Lot on which Improvements are being constructed shall keep all Streets cleared of mud and dirt left by construction vehicles entering such Lot. Once commenced, all construction on a Lot shall be continued with due diligence and good faith until completion.

3.15.2 Each Owner expressly covenants that it shall use its good faith efforts to prevent adverse impacts, including, without limitation, air, soil and water pollution, soil erosion, elimination of vegetation without replacement or increased runoff rates to areas outside its Lot in any way resulting from construction, reconstruction, alteration, maintenance, repair, replacement or removal of Improvements and that it shall indemnify and hold harmless the Association, the Architectural Committee, Declarant and other Owners from any and all damages resulting therefrom. All possible contaminants must be stored in a containment facility that will not allow such to enter any soils on or off the Lot.

3.15.3 Prior to any excavation on a Lot, the Owner shall determine and mark the location of and will protect all existing utilities and landscape irrigation lines. Utility lines and landscape irrigation lines are to be located before earth moving or drilling equipment operations are allowed to commence near underground utilities or landscape irrigation lines.

### 3.16 Owners' Maintenance Responsibilities.

Each Owner shall have the duty and responsibility, at its sole cost and expense, to keep its Lot, and the Buildings and Improvements thereon in a well-maintained, safe, clean, neat, orderly and attractive condition at all times, normal wear and tear and deterioration excepted. Such maintenance includes, without limitation, the following: prompt removal of all litter, trash, refuse and waste; lawn mowing; tree and shrub care; watering; other Landscaping maintenance; keeping exterior lighting and mechanical facilities in working order; keeping driveways and private roads in good repair; keeping all signs in good repair; complying with all government, health and police requirements; repairing exterior damage to Improvements; striping of parking areas and repainting of Improvements; and

maintaining Single User Railroad Tracks and spur tracks that connect into lead tracks in Railroad Areas. The Association shall have the right (but not the obligation) to perform any maintenance, repair or replacement required of Owner by this Section on a Lot upon the failure of the Owner to do so if such failure continues for seven (7) days after written notice thereof is given by the Association to such Owner (or after such longer notice period as may be allowed by the Architectural Committee due to the nature of such deficiency). Should the Association undertake such corrective action on behalf of an Owner, it shall bill such Owner for the costs and expenses related thereto (plus a reasonable administrative fee not to exceed 15%) and if such bill is not paid within thirty (30) days the amount thereof shall constitute a Special Assessment and shall be a lien upon the Lot and shall also be the personal obligation of the Owner as set forth in Article 6 hereof.

### 3.17 Other Operations and Uses.

Operations and uses that are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if written operational plans and specifications for such operations or uses, containing such information as may be requested by the Architectural Committee, are submitted to and approved in writing by the Architectural Committee, which approval shall be based upon analysis of the anticipated effect of such operations or uses upon other Lots, upon other real property in the vicinity of the Property, and upon the occupants thereof, but shall in all cases be the sole and absolute discretion of the Architectural Committee.

### 3.18 Restrictive Covenants for Exclusive or Permitted Uses.

Declarant may, by covenant duly recorded in the office of the Storey County Recorder, limit uses on any Lot by either or both of the following methods:

- (a) specify an exclusive use on a Lot, thereby prohibiting other Lots from engaging in that use. However, no exclusive use granted to another shall be binding against a Lot without the Owner's consent, if: (1) the Lot was transferred by sale or lease by Declarant to an Owner prior in time to the imposition of the exclusive use for the benefit of another; and (2) the permitted uses on the Lot allow the use otherwise prohibited by the exclusive use;
- (b) specify permitted uses on a Lot, thereby restricting the uses to be engaged in on that parcel.

### 3.19 Variance.

Upon good cause being shown by any Owner of any portion of the Property as determined by the Architectural Committee in its sole discretion, the Architectural Committee is hereby granted the discretion and right to permit a variance from any of the requirements of this Article under extraordinary or exceptional circumstances, or in order to prevent any Owner from experiencing an undue hardship; provided that the granting of the variance will not significantly undermine or adversely affect the intent and purposes of this Declaration.



## ARTICLE 4 - DESIGN GUIDELINES

### 4.1 General Provisions.

The design guidelines and development standards and criteria for the Property (the "Design Guidelines") shall be promulgated by the Committee.

### 4.2 Conflicts.

The parties hereto expressly acknowledge and agree that in the event of a conflict between the terms, conditions, covenants and provisions of this Declaration and the Design Guidelines, the terms, conditions, covenants and provisions of this Declaration shall control.

## ARTICLE 5 - COMMON AREAS

### 5.1 Easements of Enjoyment.

Subject to the provisions of Section 5.3.5, every Member of the Association, Occupants and their employees shall have a right and easement of enjoyment in and to the Common Areas.

### 5.2 Title And Improvements To Common Areas.

5.2.1 Declarant shall convey ownership of certain Common Areas to the Association, which shall be responsible for their care, operation and maintenance, within one (1) year after their designation as such on a recorded plat or its equivalent, or one (1) year after the recordation of this Declaration, whichever event is later. Common Areas owned in fee simple by the Association will typically be those parcels of land which are Streets, Railroad Areas, drainage ways or open space.

5.2.2 Common Areas which are under Association management, care, operation and maintenance due to an easement as specified in Article 7 hereof, shall be owned in fee simple by the Owners.

5.2.3 Declarant Improvements. Prior to dedication to Association of Common Areas to be improved by Declarant (e.g., Streets, landscaped areas, drainage channels and basins, recreation amenities, Railroad Areas), all improvements shall be completed in a good and workmanlike manner. Streets shall be constructed to at least the minimum standards of applicable street design for Storey County.

### 5.3 Rights of Association.

The rights and easements of enjoyment in Common Area created hereby shall be subject to the following:

5.3.1 the right of the Association to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Areas;

5.3.2 the right of the Association to sell and convey the Common Areas, or any part thereof, provided such sale or conveyance is expressly authorized by Section 5.7.2, or approved by a majority of the total eligible votes of the membership of the Association at a properly noticed meeting of the Association;

5.3.3 the right of the Association to borrow money for the purpose of improving the Common Areas, or any part thereof, and to mortgage the Common Areas, or any part thereof;

5.3.4 the right of the Association to take such steps as are reasonably necessary to protect the Common Areas, or any part thereof, against foreclosure;

5.3.5 the right (but not the obligation) of the Association to suspend the easements of enjoyment of any member of the Association during which time any Assessment levied is delinquent; and

5.3.6 any other rights or provisions of Association specified in its Articles of Incorporation or Bylaws.

#### 5.4 Use.

The use of the Common Areas is not confined to their present use, nor is it confined to the initial Landscaping or Improvements located thereon. The Owners and Occupants shall have the right to use the Common Areas for purposes consistent with the other provisions set forth in this Declaration. The general public may also be allowed to use and enjoy Common Area, either as required by County provisions, or as allowed by the Association.

#### 5.5 Additional Common Areas.

Declarant may, at any time by Supplemental Declaration, without the approval of the Owners, Occupants or Association, add additional portions of the Property to the Common Areas and specify the purpose of such additional areas, provided that such additional portions are either owned by Declarant or Association or are covered by easements or licenses granted to Declarant or Association. Except for additions to Common Areas by Declarant, Association must approve the addition of Common Areas. Any such unapproved addition of Common Areas shall be null and void.

#### 5.6 Licensed Landscaping Areas.

Declarant or Association may obtain from an applicable government entity a right to landscape portions of public rights-of-way within or adjacent to the Property as Licensed Landscaping Areas ("Licensed Landscaping Areas"). Association shall maintain the landscaping and irrigation systems contained in the Licensed Landscaping Areas (if any), which shall be considered part of the Common Areas.

5.7 Assignment.

5.7.1 Declarant and Association are expressly reserved the right to assign all or any of the landscaping license(s) for Licensed Landscaping Areas and all its right, title and interest therein to any third party including, without limitation, the County, other public authorities, a special assessment district, the Owners or the Association. No such assignment or the acceptance thereof will extinguish, limit or modify any landscaping license unless expressly so stated in such instrument.

5.7.2 In addition to the foregoing, Declarant and Association are expressly reserved the right to transfer title, possession or control to all or any part of the Common Areas to any third party, including, without limitation, the County, other public authorities, a special assessment district or others, provided that the general uses and purposes of the Common Areas are preserved.

5.8 Declarant's Obligations.

Except as provided in Section 5.6, nothing herein contained shall require or obligate Declarant to install or maintain Landscaping or other Improvements in the Common Areas.

5.9 Owner Enhancement of Common Area.

Owners may, but only with express approval of the Association, construct additional Improvements in Common Areas (including land subject to Common Area easements), provided the Improvements are of a kind and nature which do not detract from the easement of enjoyment created by Section 5.1 and otherwise are consistent with the purposes and uses of Common Area. Association may require as a condition of approval that an Owner maintain and repair, or pay the cost of maintenance and repair, of any Improvements it constructs in Common Areas.

**ARTICLE 6 - ASSESSMENTS FOR COMMON EXPENSES**

6.1 Covenant to Pay.

Declarant for each parcel of the Property subject to this Declaration, and each Owner, by its acceptance of a deed for each Lot owned, covenants and agrees to pay to the Association such Regular and Special Assessments as are established, made, and collected as provided in this Declaration.

6.2 Personal Obligations.

Each Assessment, together with any late charge, interest, fine, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner of the Lot subject to the Assessment at the time such Assessment became due and payable. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such Assessment respecting such Lot shall be both joint and several. A purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments. Suit to recover a

money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by abandonment of its parcel.

### 6.3 Purpose and Amount of Assessments.

The Assessments levied by the Association shall be determined by the Board and shall be the amount estimated to be required, and shall be used exclusively to promote the purposes specified in the Declaration for the performance of the duties of the Association. Funds held by the Association shall be held, to the extent possible, in interest bearing accounts.

### 6.4 Regular Assessments.

Not less than sixty (60) days before the beginning of each calendar year of the Association, the Board shall meet for the purpose of preparing the proposed operating statement or budget for the forthcoming fiscal year, and establishing the Regular Assessment (also sometimes called the annual Assessment) for the forthcoming calendar year, subject to the power of disapproval of the members, as specified in Section 6.5; provided, however, the Board may not establish a Regular Assessment for any calendar year which is more than two hundred percent (200%) of the Regular Assessment of the prior year (except the first such year if it should be less than twelve (12) months), without the approval by vote or written consent of members holding fifty-one percent (51%) of the voting rights.

### 6.5 Budget.

The Board shall adopt a proposed budget for each calendar year based on the projected annual Common Expenses of the Association, which shall include a reasonable reserve. Within 30 days after adoption of any proposed budget for the Association, the Board shall provide a summary of the budget to all Members, and shall set a date for a meeting of the Members to consider ratification of the budget not less than 14 nor more 30 days after mailing of the summary. Unless at that meeting 75% of all Members with voting power in the Association reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Members must be continued until such time as the Members ratify a subsequent budget proposed by the Board.

### 6.6 Special Assessments.

If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, then the Board shall determine the approximate amount necessary to defray such expenses; and if the amount is approved by a majority vote of the Board, it shall become a Special Assessment. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the Assessment immediately against Owners. Additionally, the Association shall have the power to incur expenses for maintenance and repair of the improvements as Special Assessments on any Owner's parcel (and for fees, fines, attorneys fees, costs, interest, late charges and other payment obligations of Owners to Association specified herein) as specified in this Declaration.

6.7 Uniform Rate of Assessment.

Except as otherwise specifically provided in this Declaration, Regular and Special Assessments of the Association must be fixed at a uniform rate for all Owners subject to Assessments; and the amount assessed to each Owner shall be determined by dividing the total amount assessed by a fraction, the numerator of which is the number of Developable Acreage owned by the Owner within the Property, including any fraction thereof and the denominator of which is the total number of acres owned by all Owners within the Property. All Developable Acreage owned by Declarant within the Property shall be subject to Assessments.

6.8 Assessment Period.

The Regular Assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year; and Regular Assessments shall be payable in advance in one installment unless the Board adopts some other basis for collection. However, the initial Regular Assessment for each parcel shall be prorated for the calendar year in which the Assessment becomes due and, if possible, shall be paid in escrow on the purchase of the parcel.

6.9 Notice of Assessments; Time for Payment.

The Association may, in its discretion, give written notice of Assessments to each Owner, which notice shall specify the amount of the Assessment and the date or dates of payment of the same. Payment shall be due fifteen (15) days after such written notice has been given, or January 10th of each year for that calendar year, whichever date is later. Each delinquent Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due, together with a late charge of TWENTY-FIVE DOLLARS AND NO/100 (\$25.00) for each delinquent installment. Failure of the Association to give notice of the Assessment shall not affect the liability of the Owner of any Lot for such Assessment, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given.

6.10 Statement of Account.

Upon payment of a reasonable fee, and upon written request of any Owner, Occupant or any beneficiary of a deed of trust, prospective beneficiary, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot, the amount of the current Regular Assessment, and the date that such Assessment becomes or became due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a deed of trust of the requesting beneficiary which acquired its interest subsequent to requesting such statement.

6.11 Collection of Assessments.

The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including any manager, can enforce the obligations of the Owners or Occupants to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity; or the Board may enforce Assessments by other proceedings or, through the exercise of the power of sale granted to the Board. Suit to recover a money judgment against an Owner for unpaid Assessments together with all other amounts allowed by law or described in this Declaration shall be maintainable without first foreclosing against the parcel subject to the lien for such Assessment or waiving the lien rights granted hereby.

6.12 Lien for Assessments; Priority.

All Assessments to any Lot pursuant to this Article, together with interest, fees, charges, fines and other expenses allowed by law shall be secured by a lien on such Lot in favor of the Association. Pursuant to the authority granted in NRS 278A.170, the nature of the lien and the procedure for foreclosure and sale shall be as specified in NRS 116.3116 to 116.31168, inclusive, and those statutes are incorporated herein by reference; provided that any conflict between the provisions of this Declaration and the provisions of said statutes shall be governed by the provisions of this Declaration.

6.13 Railroad Area Assessments.

All Owners and Occupants who own or occupy Lots in the Property that (a) are contiguous to a Railroad Area, and (b) at the time the hereinafter described costs are incurred, are served by a "spur track" from such parcel connecting to a "lead track" in that Railroad Area (the "Railroad Area Users"), shall be responsible and liable for Assessments consisting of all costs and expenses incurred by the Association for the maintenance, repair and reconstruction of the railroad tracks, facilities and equipment in that Railroad Area and for taxes on that Railroad Area. The Board may levy a Railroad Area Assessment against such Railroad Area Users for the purpose of collecting such costs, expenses and taxes, and such Railroad Area Users shall be personally liable therefor and their respective Lots, to the fullest extent permitted by law, shall be subject to a lien to secure payment of such Railroad Area Assessment as provided in this Article 6. Such costs, expenses and taxes shall be treated separately for each Railroad Area, that is, only the Railroad Area Users owning parcels contiguous to a specific Railroad Area shall be responsible for the costs, expenses and taxes related to that Railroad Area and shall not be responsible for expenses related to any other Railroad Area. The Railroad Area Assessment related to a specific Railroad Area shall be allocated among such Railroad Area Users based upon the relative linear footage of the boundary of each such Railroad Area User's Lot that abuts a boundary of that Railroad Area. The portion of a Railroad Area Assessment allocated to a Railroad Area User's parcel shall be a fraction with a numerator equal to the linear footage of the boundary of its Lot that is contiguous to a boundary of the Railroad Area and a denominator equal to the aggregate linear footage of all boundaries of all Railroad Area Users' Lots that are contiguous to a boundary of that Railroad Area. No portion of any Railroad Area Assessment shall be allocated to a parcel that does not have "spur tracks" connecting into the "lead tracks" in that Railroad Area.

Should an Owner or Occupant desire rail service to its Lot at a time when rail infrastructure is substantially complete, Declarant or its assigns may charge such Owner or Occupant a special assessment to recoup a portion of the previously incurred infrastructure costs. Payment of same by such Owner or Occupant shall not relieve said Owner or Occupant of its obligation to pay Railroad Area Assessments on a prospective basis.

Notwithstanding the generality of the foregoing, any railway facilities attributable only to a specific Owner or Occupant shall not be part of the assessment scheme set forth above and all costs and expenses related to such Single User Railroad Tracks shall be paid solely by the Owner or Occupant deriving benefit therefrom. Should the Association determine, in its sole and absolute discretion, that any such Owner or Occupant is not properly maintaining, repairing or reconstructing its private railway facilities, the Association may, but shall be under no such affirmative obligation, undertake to make such repairs, perform such maintenance or reconstruction (or cause the same to be made or performed) and bill such Owner or Occupant for the costs and expenses related thereto and if such bill is not paid within thirty (30) days, the amount thereof shall constitute an Assessment and shall be a lien upon the Lot and shall also be the personal obligation of the Owner or Occupant of the Lot as set forth in this Article 6.

## ARTICLE 7 - EASEMENTS

### 7.1 Non-Exclusive Access Easements.

Declarant and Association hereby reserve to themselves a non-exclusive easement for purposes of ingress, egress, construction and maintenance over such portions of the Property as may be necessary for Declarant or Association to enjoy their rights and discharge their obligations under this Declaration.

### 7.2 Drainage.

Declarant and Association hereby reserve to themselves, together with the right to grant and transfer the same to Owners of Lots within the Property, non-exclusive easements for surface drainage over the Property through the drainage patterns and systems as are established from time to time upon the Property. Except as otherwise set forth as an obligation of Declarant or Association under this Declaration, each Owner shall maintain all such drainage facilities on that Owner's Lot in a neat, orderly and safe condition and in such a manner as to prevent erosion or sliding problems and to facilitate the orderly discharge of water throughout the drainage systems and patterns established from time to time upon the Property. Nothing herein shall prevent an Owner of a Lot, the Declarant or Association from relocating the drainage patterns established upon such Owner's Lot, provided such relocation does not unreasonably interfere with, or increase the burden of, drainage from or onto other Lots within the Property, nor interfere with the orderly discharge of water by means of same.

### 7.3 Easements for Utilities.

Declarant and Association hereby reserve to themselves, together with the right to grant and transfer the same, non-exclusive easements within the Property for the installation and maintenance

of sewer, cable, TV, telephone, electric, water, drainage facilities and other utility services as are necessary for Declarant and Association to enjoy its rights and discharge its obligations under this Declaration. Said easements and reservations shall include the right to enter upon the Lots owned by others or to have utility companies enter upon such Lots in or upon which such utilities, connections, lines or facilities or any portion thereof lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; provided, however, that Declarant, Association and each such utility company shall exercise care and consideration in so entering upon another owner's Lot so as not to interfere with the use and enjoyment of same by the Owner and its Occupant and shall promptly repair any damage to any Lot caused by such entry as promptly as possible after completion of the work. Nothing herein shall prevent any Owner of a Lot from relocating any installations or other facilities upon its Lot, at its sole cost and expense, provided such relocation does not interfere with the use and enjoyment of such installations and facilities by Declarant. Each Owner shall be entitled to utilize the surface of the Property in or upon which utilities, connections, lines or facilities lie for paving and landscaping purposes and may construct permanent structures upon said Property provided said Owner relocates such utilities, connections, lines or facilities at its sole cost and expense.

#### 7.4 Easements for Railway Facilities.

Declarant and Association hereby reserve to themselves, together with the right to grant and transfer the same, non-exclusive easements within all areas of the Property except for the DP Property, for the installation and maintenance of railway tracks and any other related facilities for Declarant or Association to enjoy its rights and discharge its obligations under this Declaration. Said easements and reservations shall include the right to enter upon the Lots owned by others or to have railroad companies enter upon such Lots in or upon which such tracks or facilities or any portion thereof lie, to repair, replace and generally maintain said tracks or facilities as and when the same may be necessary; provided, however, that Declarant and Association, and each such railroad company shall exercise care and consideration in so entering upon another Owner's Lot so as not to interfere with the use and enjoyment of same by the Owner and its Occupant and shall promptly repair any damage to any Lot caused by such entry as promptly as possible after completion of the work. Each Owner and its Occupant hereby acknowledge and agree that such railway facilities and easements provided therefore in this Section are essential and critical to the Property and Declarant's development thereof in accordance with the spirit and intent of this Declaration. Thus, Owners and Occupants shall not relocate or otherwise tamper or interfere with such railway facilities or easements without first obtaining express written permission from the Architectural Committee as provided in Article 3 hereof.

#### 7.5 Cut And Fill Slopes.

Declarant and Association hereby reserve to themselves, together with the right to grant and transfer the same to benefitted Owners of Lots within the Property, a nonexclusive easement on each and every Lot to cut or fill (no steeper than 3:1) all areas within ten (10) feet of an exterior boundary line of the Lot for the benefit of the Lot or other portion of the Property adjoining said exterior boundary line; provided, however, that this easement shall expire as to any such ten (10) foot area (or portion thereof) in which the Lot Owner burdened by the easement has installed permanent improvements (e.g., drainage facilities, parking lots, driveways, other structures, landscaping, fencing)



unless said permanent improvements can be removed, repaired or replaced on the cut or fill slope by the Owner of the benefitted Lot without unreasonable interference with the use and enjoyment of the Lot Owner burdened by the easement, at the sole cost and expense of the Lot Owner benefitted by the easement. Once the cut or fill slope is constructed, the burdened Lot Owner shall be responsible for all repair and maintenance of easement area.

#### 7.6 Other Easements.

Declarant and Association (together with their duly appointed agents) shall have an easement for full right of ingress and egress at all times within the Property for the exercise of rights under this Declaration and for the carrying out of their other rights, functions, duties and obligations as set forth in this Declaration. Any such entry by Declarant or Association or their duly appointed agents upon the Property shall be made with as minimum inconvenience to the affected Owner or Occupant as practical.

### **ARTICLE 8 - CONFLICTS/OWNERS' NOTICES**

8.1 Conflicts. Zoning ordinances, buildings codes and regulations, and any other governmental restrictions and requirements shall be observed. In the event of any conflict between this Declaration and any such governmental codes, regulations, restrictions, and requirements, the more restrictive standards shall apply. Any approval required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body having jurisdiction. If any conflict arises between the provisions of this Declaration and any other document affecting the property subject to this Declaration, the provisions of this Declaration shall control.

8.2 Owners' Notices. Any Owner who shall transfer to another entity any title, interest in or right of occupancy to a Lot or portions thereof, shall give actual notice of the requirements of this Declaration to such entity, and shall give actual notice of said transfer to Association.

### **ARTICLE 9 - SPECIAL PROVISIONS FOR DP OPERATING PARTNERSHIP, L.P.**

9.1 DP Purchase. DP has purchased a large portion of the Phase One Property, as described on Exhibit "C", prior to development of the Property with streets and utilities. In order to provide added assurance to DP that the Phase One Property will be properly developed by Declarant and the provisions of this Declaration will be enforced, the following Sections of this Article 9 shall inure to the benefit of, and be enforceable by, DP personally. The provisions of this Article 9 shall not be covenants which run with the DP Property, but shall be assignable one time without Declarant approval to an assignee owning more than fifty percent (50%) of the DP Property, by written assignment recorded in the office of the Recorder of Storey County, Nevada.

9.2 Design Guidelines. The provisions of the Design Guidelines promulgated by the Committee as of the date of execution of this Declaration relating to Phase One Property shall not be amended, nor variances granted, without DP's consent.

9.3 Variances/Amendments. No variances allowed by the provisions of this Declaration, and no amendments of this Declaration, relating to Phase One Property shall be made without DP's consent.

9.4 Limit On Assessments. The total annual aggregate Assessments (as adjusted below in this Subsection) of all kinds per acre by the Association for DP Property shall not exceed the total annual aggregate assessments of all kinds per acre made by the South Meadows Association for real property within the South Meadows Business Center in Reno, Nevada. Excluded from the comparison of assessments specified above shall be Common Expenses assessed by Association for Streets and Railroad Assessment Areas.

9.5 Declarant Contracts With Association. Any contracts between Declarant (including any affiliate of Declarant or any entity with majority ownership or control by Declarant or a shareholder of Declarant) and Association affecting Phase One Property shall be subject to approval by DP.

9.6 Termination. The provisions of this Article 9 shall terminate at the time the combined Developable Acreage of DP or its assignee (pursuant to Section 9.1) own less than twenty percent (20%) of the Developable Acreage within the DP Property.

## ARTICLE 10 - ENFORCEMENT

10.1 Enforcement. Except as expressly limited herein, Association, Declarant or any Owner shall have the right to enforce the provisions of this Declaration now or hereafter imposed by arbitration as provided in Subsection 10.3 below, or by any proceeding at law or in equity. Failure by the Association, Declarant or by any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter. The Association may establish and impose administrative procedures for resolving claims or disputes arising from the interpretation, application or enforcement of any provisions stated herein or specified in the Articles, Bylaws, or rules and regulations adopted by the Association or the Committee, in addition to the procedures specified in Subsection 10.2.

10.2 Suspension of Privileges/Fines. The Board may, anything herein to the contrary notwithstanding, impose fines for violations of this Declaration other than delinquent assessments; and may suspend voting rights, other membership rights and all rights to use the Association's Common Areas of any Owner for any period during which any Association assessment against such Owner's property remains unpaid, or during the period of any continuing violation of the provisions of this Declaration by such Owner after the existence thereof has been declared by the Board. Violations of this Declaration shall include violations by virtue of the failure of a member to comply with the rules and regulations of the Association, Design Guidelines or procedures of the Committee. Before Association may impose fines or suspend rights the Association must first comply with the following procedures:

- (a) Notice: Association must either mail to the Owner by registered mail, return receipt requested, or personally deliver to the Owner a notice that the Owner is subject to imposition of a fine or that voting rights, other membership rights and rights to use the Common Area will be suspended unless the unpaid assessments are paid or the violation is cured, as the case may be, within fourteen (14) days of delivery of the

notice. Notice by registered mail shall be deemed delivered 48 hours after deposit with the U.S. Postal Service or on the date a receipt is signed, whichever is earlier.

- (b) Opportunity to be Heard: The notice shall also specify, in the case of a proposed suspension on grounds other than failure to pay an assessment, that the Owner may protest the fine or suspension by written notice to the Board delivered to any Board member in the manner specified above in subsection (a). In the event of a protest, the fine or suspension shall not take effect until the Board has held a hearing to consider the protest and made a decision on the merits of the protest.

10.3 Arbitration. Claims and disputes arising from this Declaration, including appeal of a decision by the Board under Section 10.2, shall be subject to arbitration, and shall be decided by arbitration in accordance with the Rules of the American Arbitration Association currently in effect, unless the parties to the claim or dispute mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The following procedures shall apply:

- (a) Performance During Arbitration. During arbitration proceedings the parties shall comply with all requirements for performance of all obligations under the Declaration;
- (b) When Arbitration May Be Demanded. Exception in the case of an appeal of a Board decision under Section 10.21, demand for arbitration of any claim may not be made until the tenth business day after the party asserting a claim has presented evidence of the claim to the other party, in order to give the other party a reasonable opportunity to respond; and
- (c) Limitation On Claim. Except for continuing violations, a demand for arbitration shall be barred unless made within six (6) months after the date the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.
- (d) Judgment On Final Award. The award rendered by the arbitrator or arbitrators shall be binding and final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### 10.4 Abatement and Suit.

Violation or breach of any restriction or covenant herein contained shall give to the Association the right to enter upon the portion of the Property as to which said violation or breach exists and to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and the meaning of the provisions hereof. In addition, the Association, Declarant and each Owner may commence an arbitration and prosecute a proceeding at law or in equity against any person or persons who have violated or are attempting to violate any of the provisions of this Declaration to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violations.

10.5 Deemed to Constitute a Nuisance.

The result of every action or permission whereby any restriction or covenant herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner or Occupant, either public or private, shall be applicable against every such result and may be exercised by the Architectural Committee, any Owner or Declarant.

10.6 Inspection.

The Association Board Members or the members of the Architectural Committee may from time to time at any reasonable hour or hours, enter and inspect any property subject to this Declaration to ascertain compliance therewith.

10.7 Failure to Enforce Not a Waiver of Rights.

The failure of the Declarant, the Association, the Architectural Committee or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other covenant, condition or restriction.

10.8 Approvals in Writing.

Whenever in this Declaration the approval or consent of the Association, the Architectural Committee or any Owner is required, such approval or consent shall be effective only if in writing and signed by such party. Unless otherwise specified all approvals or consents shall not be unreasonably withheld.

10.9 Protection of Mortgagees.

A breach of any of the restrictions, conditions, covenants or reservations herein contained shall not defeat or render invalid the lien of any bona fide Mortgage made in good faith and for value as to any Lot, or any portion or portions thereof, but such conditions, covenants and restrictions shall be binding upon and effective against any Owner or Owners of any such Lot, or any portion or portions thereof, whose title is acquired by foreclosure, trustee's sale or otherwise.

10.10 Effect of Foreclosure on Assessment Lien.

If any lien created by any provision hereof is subject and subordinate to the lien of a Mortgage: (a) the foreclosure of any lien created herein or pursuant hereto shall not operate to affect or impair the lien of such Mortgage; and (b) the foreclosure of the lien of such Mortgage, the acceptance of a deed in lieu of foreclosure of such Mortgage or a sale under a power of sale included in such Mortgage shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the events of foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for charges as shall have accrued to the time of any of the events of foreclosure, but subject to the lien hereof for all said charges that shall accrue

subsequent to the events of foreclosure. Nothing in this Section shall be construed to release any Owner from its personal obligation to pay any Assessment levied pursuant hereto.

10.11 Declarant Enforcement.

Declarant has no right to enforce the provisions of this Declaration, other than to exercise the rights given to any member of the Association or to enforce rights granted expressly to Declarant hereby, and Declarant has no obligation or responsibility to enforce the provisions hereof, and shall not be liable for failure to do so.

**ARTICLE 11 - SUBDIVISION RESTRICTIONS**

Each and every Lot shall consist of at least one (1) whole and entire Lot. Subject to the provisions of this Article 11 and Section 15.4, no Lot or Site shall be subdivided unless the Architectural Committee expressly approves such subdivision, in its sole and absolute discretion, and such subdivision is approved by the County in which such Lot or Site is located. In addition, any such approved subdivision must comply with applicable provisions of the NRS.

**ARTICLE 12 - TERM, TERMINATION, AMENDMENT AND ASSIGNMENT**

12.1 Term, Amendment and Termination.

This Declaration shall run with and bind the land for a term of forty (40) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless those persons representing at least seventy-five percent (75%) of the voting power of the Members of the Association agree to terminate this Declaration, effective at the end of the then current original term or extension period, in which case a notice signed by those persons representing that voting power must be executed and recorded. This Declaration may be amended by an instrument signed by those persons representing over fifty percent (50%) of the voting power of the Members of the Association; provided that no amendment which imposes obligations or restricts rights of the Declarant shall be valid unless approved by the Declarant, and provided further that no amendment shall apply to the DP Property, except as specified in Article 9 of this Declaration. Any amendment must be recorded or it has no effect. For purposes of this Section, the signature of one of the Owners for each Lot with more than one Owner shall be deemed sufficient to evidence the agreement of all Owners of the Lot.

12.2 Assignment.

Declarant may assign all or part of its rights hereunder, but only by an express, written assignment, properly recorded in the office of the Storey County Recorder, Nevada.

## ARTICLE 13 - ANNEXATION

### 13.1 General Provision.

Declarant may at any time or from time to time during the pendency of this Declaration add real property to the real property which is covered by this Declaration, and upon the recording of a certificate of annexation of real property containing the provisions set forth in Section 13.2 of this Article 13, this Declaration shall apply to the annexed real property in the same manner as if it were originally covered by this Declaration; and thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the annexed real property shall be the same as with respect to the real property originally covered by this Declaration, and the rights, privileges, duties and liabilities of the Owners and Occupants of Lots within the annexed real property shall be the same as in the case of the property originally covered by this Declaration, and the term "Property" shall be deemed to include such annexed real property.

### 13.2 Certificate of Annexation.

The certificate of annexation of real property which is referred in Section 13.1 of this Article shall be executed by the Declarant and shall contain, without limitation, the following provisions:

- (a) a reference to this Declaration, which reference shall state the date of recording hereof and the document number hereof in the records of Storey County, Nevada;
- (b) a statement that the provisions of this Declaration shall apply to the annexed real property in the manner set forth in Section 13.1 of this Article 13;
- (c) an exact legal description of the annexed real property;
- (d) any additional or specific restrictive covenants which may be applicable solely to the annexed real property; and
- (e) such additional matters as the Declarant may desire to state in the certificate.

### 13.3 Increasing Burdens or Declarant Rights.

The annexation of real property under this Article shall be allowed without recourse to or liability of Declarant, even though said annexation may have the effect of increasing burdens on Common Area, increasing Common Expenses, or increasing the rights of Declarant hereunder.

## ARTICLE 14 - DEANNEXATION

### 14.1 General Provision.

Declarant may at any time or from time to time during the pendency of this Declaration remove real property from the real property which is covered by this Declaration, provided that

Declarant may not so remove any Phase One Property without the prior written consent of DP, as evidenced by DP signature on the deannexation certificate. Upon the recording of a certificate of deannexation of real property containing the provisions set forth in Section 14.2 of this Article 14, this Declaration shall no longer apply to the deannexed real property.

#### 14.2 Certificate of Deannexation.

The certificate of deannexation of real property which is referred to in Section 14.1 of this Article 14 shall contain, without limitation, the following provisions:

- (a) a reference to this Declaration, which reference shall state the date of recording hereof and the document number hereof in the records of Storey County, Nevada;
- (b) a statement that the provisions of this Declaration shall no longer apply to the deannexed real property in the manner set forth in Section 14.1 of this Article 14;
- (c) an exact legal description of the deannexed real property; and
- (d) such additional matters as the Declarant may desire to state in the certificate.

### ARTICLE 15 - RESERVATION OF RIGHTS

#### 15.1 Zoning Changes.

Declarant shall have the right and power, from time to time, subject to approval from the County, if required, to change the zoning or other entitlement of any portion of the Property owned by Declarant in such manner as Declarant deems appropriate. No Owner or Occupant shall apply for any change in zoning or other entitlement for any portion of the Property owned or occupied by such Owner or Occupant unless such zoning or other entitlement change is approved in writing by the Architectural Committee, in its sole discretion.

#### 15.2 Declarant Activities.

Declarant may conduct its sales and marketing activities for the Property from any permanent or temporary sales buildings or trailers and may conduct improvement work and activities on portions of the Property owned by Declarant and do all things necessary or convenient as required to expeditiously commence, continue and complete such improvement work, including, without limitation, the provision of temporary buildings (including trailers), temporary storage of construction materials and equipment and the installation of signage of such types, in such sizes and at such locations on portions of the Property owned by Declarant as Declarant deems appropriate.

#### 15.3 Successor Declarants.

Declarant and any successor to Declarant may be undertaking the work of constructing Improvements to the Property owned or controlled by Declarant, or any portion thereof. The

completion of such construction and the sale or other disposal of Lots within the Property is essential to the establishment and welfare of the Property. The covenants, conditions and restrictions contained in this Declaration are personal to Declarant and any successor to Declarant, and may only be transferred by a written assignment duly recorded from the Declarant to a successor to Declarant, or from a successor to Declarant to another successor to Declarant. Such an express assignment may pertain to all or any part of the Property, and to all or any part of Declarant's rights hereunder.

#### 15.4 Construction or Subdivision by Declarant.

Nothing in this Declaration shall limit the right of Declarant to alter or subdivide any of the Lots, or to construct such Improvements as Declarant deems advisable prior to the sale of such Lots by Declarant. Declarant shall not be required to comply with the provisions of Article 4 in its construction activities. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Property such structures and displays as may be necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. In addition, nothing in this Declaration shall limit the right of Declarant to construct such Signs on portions of the Property which are owned by Declarant or within any public right-of-way or Common Area as Declarant deemed advisable to identify the location of the Property or give directions to and identify areas within the Property, provided that such Signs shall be in conformity with applicable zoning ordinances and regulations. Further, nothing in this Declaration shall require Declarant to maintain any portion of the Property or any Improvements thereto prior to the sale or lease of such portion of the Property by Declarant. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be necessary to the development and disposal of the Lots, in Declarant's sole discretion. Declarant reserves the right to alter its construction plans and designs as it deems appropriate.

#### 15.5 Liability.

Declarant or any party exercising the rights of Declarant shall exercise its own judgment to insure compliance with the provisions of the Declaration. Such parties and their employees and agents shall not be liable to any Owner, Occupant or to any other party by reason of a mistake in judgment, negligence or non-enforcement of any of the provisions of this Declaration.

### **ARTICLE 16 - WATER RIGHTS AND ISSUES**

#### 16.1 Obligation to Conserve.

Water conservation is and will be of concern to Declarant and all Owners or Occupants of the Property or any portion thereof. The Association or Architectural Committee may, from time to time, promulgate certain rules, regulations, or guidelines pertaining to water use. Owners and Occupants expressly covenant and agree that they will abide by and obey any such rules, regulations or guidelines. Without limiting the generality of the foregoing, no Owner or Occupant (or agent thereof) shall waste or unnecessarily use any water or water rights for or appurtenant to the Property or any portion thereof. All Owners and Occupants (or agents thereof) shall utilize such water or water rights



reasonably and beneficially and in accordance with existing permit conditions and regulations. Owners and Occupants (or agents thereof) shall take affirmative measures to conserve water, in accordance with applicable state and local requirements, including, without limitation, the following:

- (a) use of water conservation devices, including, without limitation, inline aerators and flow restrictors;
- (b) use of reclaimed effluent where available and appropriate, and installation of separate, dedicated water lines for nonpotable water (e.g., effluent or untreated surface water) for all irrigation needs on the Lot; and
- (c) review and upgrade of water management practices.

#### 16.2 Nonpotable Water.

Declarant hereby reserves to itself, together with the right to grant and transfer the same, the right to own and use any nonpotable water existing on the Property (including effluent from any sewer plant or septic system), and to specify that nonpotable water (e.g., untreated surface water, effluent) shall be utilized for certain purposes, including, without limitation, irrigation of Common Areas, Landscaping and manufacturing uses (e.g., washing, cooling).

### **ARTICLE 17 - SUBSEQUENT PURCHASERS**

After the date of recording hereof, any successor in interest to Declarant or any Owner shall take the Property or any interest therein subject to the provisions of this Declaration, the authority of the Association and the Architectural Committee (including, without limitation, any articles of incorporation, bylaws, or rules and regulations promulgated thereby), together with any changes, amendments or alterations to the same.

### **ARTICLE 18 - MISCELLANEOUS PROVISIONS**

#### 18.1 Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires right, title or interest in and to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

#### 18.2 Rights of Mortgagees.

All restrictions and other provisions herein contained shall be deemed subject and subordinate to all Mortgages now or hereafter executed upon land subject to these restrictions, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such Mortgage; provided, however, that if any portion of the Property is sold under a foreclosure of any

Mortgage or under the provisions of any deed of trust, any purchaser at such sale, and his successors and assigns, shall hold any and all such property purchased subject to all of the restrictions, covenants and other provisions of this Declaration.

18.3 Mutuality, Reciprocity, Runs With Land.

All restrictions, covenants and agreements herein contained are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Property; shall create mutual, equitable servitudes upon each portion of the Property in favor of every other portion of the Property; and shall create reciprocal rights and obligations between the respective Owners of all portions of the Property and privity of contract and estate between all grantees of said parcels, their heirs, successors, and assigns.

In addition, all restrictions herein contained shall operate as covenants running with the land for the benefit of the Property and each and every portion thereof and shall inure to the benefit of all grantees of the Property and each and every portion thereof, their heirs, successors and assigns, and shall apply to and bind the grantees of the Property and each and every portion thereof, their heirs, successors and assigns.

18.4 Section Headings.

Section headings where used herein are inserted for convenience only are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular sections to which they refer.

18.5 Effect of Invalidation.

If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

18.6 Effect of Declaration.

This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

18.7 Personal Covenant.

To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant, Association or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

18.8 No Surcharge.

The improvement, annexation, division or redivision of the Property shall not be deemed a surcharge of the easements benefitting such Property or the Common Area and any said easements shall at all times be appurtenant to each and every parcel into which the same may from time to time be divided or redivided.

18.9 Not a Public Dedication.

Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the County or general public, or for the general public or for any public purpose whatsoever, and this Declaration shall be strictly construed to and for the purposes expressly stated herein.

18.10 Notices.

Any notice permitted or required to be delivered as provided herein shall be in writing and shall be delivered either personally or by registered or certified mail, postage prepaid, return receipt requested. Each Notice shall be deemed delivered upon the earlier of (i) if personally delivered, the date of delivery to the address of the party to receive such notice, or (ii) if mailed, three (3) business days after the date of posting by the United State post office.

- (a) If to Declarant, the Association or the Architectural Committee:

560 South Meadows Parkway  
Reno, Nevada 89511

- (b) Notice to any Owner shall be addressed to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners or on behalf of all such co-Owners, delivery to any co-Owner shall be deemed delivery to all such co-Owners.

Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection, refusal to accept or the inability to deliver a notice because of changed address of which no notice was given to Association shall be deemed to constitute receipt of the notice, demand request or communication.

The affidavit of an officer or authorized agent of the Declarant, the Association or the Architectural Committee declaring under penalty of perjury that a notice has been mailed to any Owner or Owners to the address or addresses shown on the records of the Declarant, the Association or the Architectural Committee, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

18.11 Use of Gender and Number.

As used in this Declaration, the masculine, feminine or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates.

18.12 Binding Effect; Benefits.

This Declaration shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, executors, administrators and assigns. Notwithstanding anything in this Declaration to the contrary, nothing in this Declaration, expressed or implied, is intended to confer on any person other than the parties specified herein or their respective heirs, successors, executors, administrators and assigns any rights, remedies, obligations or liabilities under or by reason of this Declaration.

18.13 Governing Law.

This Declaration and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of action), shall be governed by and construed in accordance with the laws of the State of Nevada (exclusive of the conflict of laws provisions thereof).

18.14 Incorporation of Exhibits.

All exhibits attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

18.15 Cumulative Remedies.

All rights, options and remedies of the Association, the Architectural Committee, the Owners and the Declarant under this Declaration are cumulative, and none of them shall be exclusive of any other. Association, the Architectural Committee, the Owners and the Declarant shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law or equity, whether or not stated in this Declaration.

18.16 Use of the Words "Tahoe-Reno Industrial Center" or "TRI". No person shall use the words "Tahoe-Reno Industrial Center" or "TRI" or any derivative, or any other term which Declarant may select to name or identify the Property or any component thereof, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Tahoe-Reno Industrial Center" or "TRI" in printed or promotional matter solely to specify a particular property is located within the Property, and the Association shall be entitled to use the words "Tahoe-Reno Industrial Center" or "TRI" in its name and in the normal conduct of its business.

18.17 Attorneys Fees and Costs. In any action to enforce or administer the provisions hereof, the prevailing party shall be entitled to reasonable attorneys fees and costs.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first hereinabove written.

**ASSOCIATION:**

**TRI OWNERS ASSOCIATION,  
a Nevada nonprofit association**

By: Don Roger Norman  
DON ROGER NORMAN, Secretary

**DECLARANT:**

**TAHOE-RENO INDUSTRIAL CENTER,  
LLC, a Nevada limited liability company**

By: Don Roger Norman  
DON ROGER NORMAN, Member

**NORMAN INVESTMENTS, LLC,  
a California limited liability company**

By: Don Roger Norman  
DON ROGER NORMAN, Member

**SSI PROPERTIES, a California corporation**

By: David Kuns  
DAVID KUNS, *pc*  
Vice President of Operations

**SOUTH MEADOWS PROPERTIES  
LIMITED PARTNERSHIP, a Nevada  
limited partnership**

By: South Meadows Properties, Inc.,  
a Nevada corporation, as General  
Partner

By: Don Roger Norman  
DON ROGER NORMAN, Secretary

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF WASHOE     )

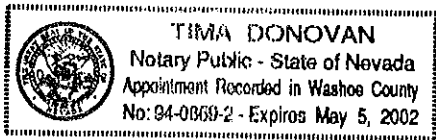
This instrument was acknowledged before me on Sept. 25, 1998, by DON ROGER NORMAN as Secretary of TRI OWNERS ASSOCIATION, a Nevada nonprofit association.



Tima Donovan  
Notary Public

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF WASHOE     )

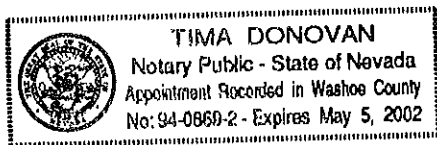
This instrument was acknowledged before me on Sept. 25, 1998, by DON ROGER NORMAN as Member of TAHOE-RENO INDUSTRIAL CENTER, a Nevada limited liability company.



Tima Donovan  
Notary Public

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF WASHOE     )

This instrument was acknowledged before me on Sept. 25, 1998, by DON ROGER NORMAN as Member of NORMAN INVESTMENTS, LLC, a California limited liability company.

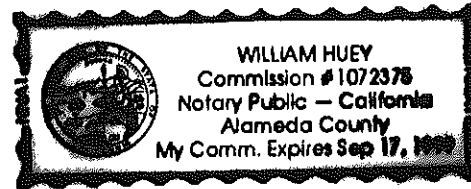


Tima Donovan  
Notary Public

STATE OF California )  
 )ss:  
COUNTY OF Santa Clara )

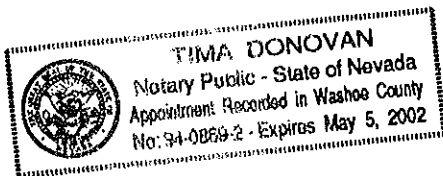
This instrument was acknowledged before me on 23 September, 1998, by DAVID <sup>DE</sup> KUNS as Vice President of Operations of SSI PROPERTIES, a California corporation.

William Huey  
Notary Public



STATE OF NEVADA )  
 )ss:  
COUNTY OF WASHOE )

This instrument was acknowledged before me on Sept. 25, 1998, by DON ROGER NORMAN as Secretary of SOUTH MEADOWS PROPERTIES, INC., a Nevada corporation, as General Partner of SOUTH MEADOWS PROPERTIES LIMITED PARTNERSHIP, a Nevada limited partnership.



Tima Donovan  
Notary Public

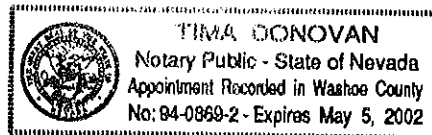


EXHIBIT "A"

PHASE ONE

**PLANNING AREA A**

The North ½ of Section 3 T19N, R22E , M.D.M.;

The NW ¼ and NW ¼ of the NE ¼ of Section 5 of T19N, R22E, M.D.M. and Parcel 1 of Amended Division of Map, filed in the office of the County Recorder of Storey County, State of Nevada on February 24, 1986 as File No. 57613 of Official Records, excepting therefrom that portion lying within the N ½ of Section 34, T20N, R22E, M.D.M.



EXHIBIT "B"

ANNEXATION PROPERTY

**PLANNING AREA B**

Sections 1, 2

The SE  $\frac{1}{4}$  of Section 3 the E  $\frac{1}{2}$  of Section 10, Section 11, the N $\frac{1}{2}$  and the SW  $\frac{1}{4}$  of Section 12, the NW  $\frac{1}{4}$  of Section 15, the N  $\frac{1}{2}$  of N  $\frac{1}{2}$  of Section 23 all in T19N, R22E, M.D.M;

The SW  $\frac{1}{4}$  and the S  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of Section 35 T20N, R22E, M.D.M;

The N  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of Section 5, Section 6, the N  $\frac{1}{2}$  of Section 7, the W  $\frac{1}{2}$  of Section 8 all in T19N, R23E, M.D.M.

The SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  and the S  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of Section 31, T20N, R23E; M.D.M.

Section 32, T20N, R23E M.D.M.

**PLANNING AREA C**

The W  $\frac{1}{2}$  of Section 17, the E  $\frac{1}{2}$  of Section 18, the S  $\frac{1}{2}$  and the NE  $\frac{1}{4}$  of Section 19, Section 20, the S  $\frac{1}{2}$  and the NW  $\frac{1}{4}$  of Section 21, and the N  $\frac{1}{2}$  of Section 29 all in T19N, R 23 E, M.D.M.

DEED FROM ASAMERA MINERALS TO  
DP OPERATING PARTNERSHIP  
EXHIBIT "C"

PARCEL A:

That portion of Parcel 1 of Amended Division of Map, filed in the office of the County Recorder of Storey County, State of Nevada on February 24, 1986 as File No. 57613 of Official Records, lying Westerly of the Westerly line of Waltham Way as described in that certain document entitled:

"QUITCLAIM DEED OF DEDICATION", recorded August 29, 1996, in Book 111, Page 5, as File No. 078479 of Official Records.

EXCEPTING THEREFROM that portion located in the Southwest quarter of the Southwest quarter of Section 32 Township 20 North, Range 22 East lying Westerly of the Easterly line of Waltham Way as described in that certain document entitled:

"QUITCLAIM DEED OF DEDICATION", recorded August 29, 1996, in Book 111, Page 5, as File No. 078479 of Official Records. Containing approximately 124.02 acres.

PARCEL B:

That portion of Section 5 Township 19 North, Range 22 East M.D.B.&M., lying Northerly of the Northerly line of Waltham Way as described in that certain document entitled:

"QUITCLAIM DEED OF DEDICATION", recorded August 29, 1996, in Book 111, Page 5, as File No. 078479 of Official Records. Containing approximately 17.46 acres.

PARCEL C:

That portion of Parcel 1 of Amended Division of Map, filed in the office of the County Recorder of Storey County, State of Nevada on February 24, 1986 as File No. 57613 of Official Records, lying Southwesterly of the Southwesterly line of Waltham Way as described in that certain document entitled:

"QUITCLAIM DEED OF DEDICATION", recorded August 29, 1996, in Book 111, Page 5, as File No. 078479 of Official Records. Containing approximately .07 acres.

PARCEL D:

Lot 98-1 of the 1st Parcel Map for Asamera Minerals (U.S.), Inc., filed in the office of the County Recorder of Storey County, Nevada, on 9-25-98, as File No. 083401 of Official Records.

Containing approximately 5.78 acres.

Description continued

PARCEL E:

Lot 98-3 of the 2nd Parcel Map for Asamera Minerals (U.S.), Inc., filed in the office of the County Recorder of Storey County, Nevada on 9-25-98, as File No. 083402 of Official Records.  
Containing approximately 76.19 acres.

PARCEL F:

Lot 98-4 of the 3rd Parcel Map for Asamera Minerals (U.S.), Inc., filed in the office of the County Recorder of Storey County, State of Nevada, on 9-25-98, as File No. 083403 of Official Records.  
Containing approximately 43.66 acres.

Portions of Assessors Parcel Nos.   04-091-36  04-091-38  
  04-091-40  04-151-07  
  04-151-08

FILED FOR RECORDING  
AT THE REQUEST OF  
First American Title  
98 SEP 25 P4:04  
**083412**  
FILED IN \_\_\_\_\_  
STOREY COUNTY CLERK  
✓ 5798