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BANNER MOUNTAIN WOODLANDS
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
SECOND AMENDMENT

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COVENANTS, CONDITIONS AND RESTRICTIONS OF
BANNER MOUNTAIN WOODLANDS AND
BANNER MOUNTAIN WOODLANDS HOMEOWNERS' ASSOCIATION

WITNESSETH

THIS SECOND AMENDED DECLARATION is made this 12th day of FEBRUARY, 1994 by the BANNER MOUNTAIN WOODLANDS HOMEOWNERS' ASSOCIATION hereinafter referred to as "BMWHA".

WHEREAS, the "Banner Mountain Woodlands" is a subdivision pertaining to a certain tract of land as shown on the Subdivision Map together with the Supplemental Data Map recorded on October 23, 1989, in the Office of the County Recorder, County of Nevada, in Book 7 of Book of Maps at pages 102-106, Document No. 89-31135, an amendment thereof having been recorded on March 27, 1992, as Document No. 92-09733 in the Official Records of the County of Nevada.

WHEREAS, the COVENANTS, CONDITIONS AND RESTRICTIONS, hereinafter referred to as "CC&R's", of Banner Mountain Woodlands and BMWHA were recorded December 29, 1989 as Document No. 89-38672 of the Official Records of the County of Nevada, the BMWHA now desire to amend that Declaration in its entirety.

PREAMBLE

A master plan has been established, as set forth in this declaration, for the subdivision, improvement and development of Banner Mountain Woodlands and each of its constituent lots in order to achieve harmonious and uniform development of the property. In accordance with the master plan Banner Mountain Properties, Ltd., the original developer of the Project, advised that the Banner and the Lava Cap Mines were previously operated on and under this property, and that deed restrictions as to specific lots will reflect the residual effects of these mining activities, such as air shafts, and that the residual effects of these mining activities have been taken into consideration in the planning and improvement of this development.

Banner Mountain Properties, Ltd. also advised that each lot owns one hundred fifty feet (150') of the subsurface mineral rights and that the mineral rights below one hundred fifty feet (150') of the surface of each lot are in separate ownership and that it is possible that the minerals below one hundred fifty feet (150') could be mined in the future provided the owner conforms to the Nevada County Mineral Extraction Plan Act and applicable state and federal mining regulations.

It is declared that Banner Mountain Woodlands, as described above, and each and every lot and parcel within it shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subjected to

the following limitations, reservations, —covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance to and pursuant to a master plan for the development of Banner Mountain Woodlands and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of Banner Mountain Woodlands. These provisions are imposed upon the BMWHA and are for the benefit of all lots and the Common Area and shall bind the owners and BMWHA. These provisions shall be a burden upon and benefit to, not only the original owner of each lot, and the BMWHA, but also to their successors and assigns. All covenants are intended as, and declared to be, covenants running with the land as well as equitable servitudes upon the land.

ARTICLE I

DEFINITIONS

- 1.1 "Architectural/Aesthetics Committee" or "AA Committee" shall mean the Committee created pursuant to Article VI of this Declaration.
- 1.2 "Articles" shall mean the Articles of Incorporation of the BMWHA, including any and all amendments, additions and deletions.
- 1.3 "Association" shall mean, and refer to, BMWHA, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.
- 1.4 "Association Rules" shall mean the rules and regulations adopted from time to time by the Association and/or the Board of Directors in accordance with its Articles of Incorporation and Bylaws, including any amendments, additions and deletions.
- 1.5 "Beneficiary" shall mean, and include, a mortgagee as well as a beneficiary or holder of a deed or trust or other security instrument encumbering any lot within Banner Mountain Woodlands.
- 1.6 "Board" shall mean the Board of Directors of the BMWHA.
- 1.7 "Bylaws" shall mean the Bylaws of the BMWHA as adopted from time to time by the Board of Directors, including any and all amendments, additions and deletions.
- 1.8 "Common Area" shall mean all the real property designated as "private roads" and "private recreation areas" as defined in Sections 2.3 and 2.4 of this Declaration, including Parcel "A," as shown on the Subdivision Map and Supplemental Data Map, and which are set aside by the Association for the common use and enjoyment of the owners.
- 1.9 "County" shall mean the County of Nevada, a political subdivision of the State of California.

1.10 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, including those restrictions and conditions shown on the Supplemental Data Map contained in Exhibit "A" together with any and all amendments, additions and deletions.

1.11 "Deed of Trust" shall mean any type of security instrument, including, but not limited to, a mortgage or a deed of trust, which encumbers a lot, or any portion of a lot, within Banner Mountain Woodlands.

1.12 "Dwelling" shall mean any permanent improvement suitable for human habitation as a single family residence.

1.13 "Improvements" shall mean all buildings, outbuildings, drive ways, parking areas, fences, retaining and other walls, antennas and any other structures of any type or kind, or remodeling, renovation, or repainting of any of the above where this would vary from the originally approved improvement application.

1.14 "Lot" shall mean, and refer to, any plot of land, or parcel, shown upon any recorded subdivision map of Banner Mountain Woodlands excluding the "Common Area" as defined in Section 1.8.

1.15 "Member" shall mean every person, or entity, who is a member of the BMWHA as provided for in Section 4.3 of this Declaration.

1.16 "Owner" shall mean, and refer to, the record owner of a fee simple title to any lot within Banner Mountain Woodlands, including contract sellers, but excluding those record owners having such interest solely as security for performance of an obligation. A "record owner" may consist of more than one individual or entity or combination thereof.

1.17 "Project Documents" shall mean the Articles of Incorporation of the BMWHA, its Bylaws and this Declaration, together with any amendments, additions and deletions.

1.18 "Property" or "Project" shall mean, and refer to, the real property described as Banner Mountain Woodlands, FM88-5, as recorded in Book 7 of the Subdivision Maps at pages 102-106 recorded on October 23, 1989, Document No. 89-31135, and as first amended by Document No. 92-09733.

1.19 "Setback" shall mean the minimum distance between a residence, or other structure, and a given road or lot line.

1.20 "Subdivision Map" shall mean the Subdivision and Supplemental Data maps for Banner Mountain Woodlands as specifically described in the Preamble to this Declaration.

ARTICLE II

COMMON AREA

2.1 "Common Area Easement." The Association reserves the right to establish and/or grant such easements and rights-of-way on, over, under, or across all of the Common Area, or any portion thereof for use of, access to, ingress and egress from any lot and the Common Area or for the benefit of any governmental agency, political subdivision, political organization or public utility entity. Ownership of the Common Area shall be subject to any dedication stated in the Subdivision Map and/or Supplemental Data Map for an easement for public use for installation, maintenance and operation of public utilities over all the Common Area and for private use for installation, maintenance, operation and use of private roads over all of the Common Area. The ownership of all Common Area is specifically subject to any easement, dedication or right of use as set forth in the Subdivision Map and/or Supplemental Data Map for private roads and private recreation areas. The County is offered an easement across the private roads for ingress and egress of its authorized emergency vehicles.

2.2 "Permitted Uses, Construction and Alteration of Improvements." The Common Area shall be held, maintained and used to meet the common interest of the members of the Association, their tenants and guests as provided by this Declaration.

2.3 "Private Roads." Those areas shown on Exhibit "A" as "private roadways" and emergency access easements shall be maintained and operated by the Association to provide ingress and egress to the lots and Common Area within the Project.

2.4 "Private Recreation Areas." Those areas shown on Exhibit "A", primarily Parcel "A", and "open space" are intended to be used as aesthetic preservation zones to provide aesthetically pleasing landscape and an outdoor recreation area for the Association members, their tenants and guests.

2.5 "Limitation on Construction." No one other than the Association shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon or shall destroy or remove any tree, shrub or vegetation in, or upon, any Common Area. Any structures located within the Common Area shall be subject to the design review approval of the Association and the approval of the appropriate Nevada County reviewing authority. Any permitted recreational uses of Parcel "A" as shown on the Subdivision Map shall be subject to approval of a conditional use permit in accordance with the procedures of Article 31 of the Nevada County Land Use and Development Code, and successor sections.

2.6 "Damage or Destruction of Common Area." In the event of any damage to, or destruction of, the Common Area or any of the improvements or facilities located thereon, the Association shall, utilizing all the available insurance proceeds, immediately undertake to repair and reconstruct any such damage, or destruction, substantially in accordance with the original design and standard of construction of the damaged, or destroyed, Common Area improvements or facility. The Association shall utilize all available insurance proceeds to accomplish such repair or reconstruction. However, in the event the members vote or consent, in writing, to amend this Declaration and not to reconstruct and/or repair such damaged, or destroyed, improvements or facilities, the insurance proceeds for such damages and/or destruction shall be used for general Association purposes and said facilities or improvements will not be repaired or reconstructed.

In the event the insurance proceeds are insufficient to cover all of the costs for such repair or reconstruction, the Board may elect to levy a special reconstruction assessment pursuant to Section 5.4 to reconstruct the destroyed, or damaged, facilities in accordance with the recommendations of the report of the Board. Any such additional special reconstruction assessment shall be levied equally as to each lot and be a lien on the lot against which said assessment is levied and enforced pursuant to the terms of Section 5.10.

ARTICLE III

PROPERTY RIGHTS

3.1 "Owners' Non-exclusive Easements; Association Rights." Every owner has a non-exclusive easement for the use, enjoyment, ingress, egress and support in, to and throughout the Common Area and any improvements and facilities on them. Each non-exclusive easement shall be appurtenant to its respective lot and shall pass with the title to that lot. Non-exclusive easements shall be subject to the following rights and restrictions:

- (a) The Association's right to adopt and enforce its rules.
- (b) The right of the Association to borrow to improve, repair and/or maintain the Common Area.
- (c) The Association's right to suspend the right of an owner to use any private recreation area, or other facility located in the Common Area, as provided in the Association Bylaws and California Corporation Code Section 7341.
- (d) The right of the Association to adopt and enforce Association rules concerning the control and use of any private entrance, streets, roadways and paved areas located upon or across the Common Area,

including the right to regulate the kind of Vehicles, their speed and parking of vehicles upon the private streets and roadways. The Association is authorized to delegate its rights regarding such private streets, roadways, and parkways for enforcement to any governmental entity or by contract to any private security patrol company.

3.2 "Subject to Subdivision." Each lot, its owner and the Association is declared to be subject to all easements, dedications, and rights of way granted or reserved in, on, over, and under the Property and each lot as shown on the Subdivision Map.

3.3 "Right of Association to Transfer." The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless a written instrument, signed by two-thirds (2/3rds) of members agreeing to such dedication or transfer, has been recorded with the County of Nevada. No dedication or transfer shall be made which will substantially impair the ingress or egress to any lot or which will substantially impair the recreational and aesthetic value of the private recreational areas.

3.4 "Delegation of Use." An owner may delegate this right to enjoyment of the Common Area to the members of his family, his guests, his tenants, and/or contract purchasers residing on the property, subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and its rules.

3.5 "Association Easements for Maintenance, Repair, and Enforcement." The Property and building sites on the Property are subject to such easements and rights-of-way for erecting, constructing, maintaining and operating public sewers, wires and conduit for lighting, heating, power, telephono, television and every other method of conducting and performing any public or quasi-public utility service or function beneath the surface of the ground as such easements and rights-of-way are more particularly set forth on the plat map for the Property.

The Association shall have an easement across every lot within the Property for the limited purposes of maintaining and repairing service and underground utility lines owned by the owners of the various lots and for entry into any improvement constructed upon the lot and for admittance of such authorized persons as are reasonably necessary in the event of an emergency.

The Association shall have the power and authority at any time, and from time to time, upon reasonable notice to the owner, to enter upon the lot(s) for the purpose of enforcing any and all the provisions of this Declaration and the Association's Bylaws and Rules. "Reasonable notice" shall be no less than twenty-four (24) hours, except in emergency situation(s), and shall include at least two attempts, whether in person, by telephone or otherwise, to obtain the consent of the owner, prior to entering the property. Association shall not be liable to owner for

trespass for entry made in good faith after it has given reasonable notice, and without giving reasonable notice in an emergency situation. An "emergency situation" is one that presents the reasonable likelihood of imminent damage to person(s) or of substantial property damage.

3.6 "Utility Maintenance and Repair of Easements." Whenever sanitary sewer house connections and/or water house connections or electricity, gas, telephone, television lines or facilities, or any portion thereof lie in or upon lots owned by someone other than the owner of a lot served by said connections, lines or facilities or any portion thereof, owner shall have an easement to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below; provided, however, that such owner shall be obligated to restore the lot entered upon to substantially its former condition.

Whenever sanitary sewer house connections, and/or water house connections or electricity, gas or telephone lines serve more than one lot, the owner of each lot served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his lot.

All utility companies having easements on the Property covered by this Declaration shall have easements for cleaning, repairing, replacing and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into improvements constructed upon a lot for uncovering any such lines; provided, however, that such utility company shall be obligated to restore the improvement to substantially its former condition.

ARTICLE IV

ASSOCIATION ORGANIZATION, MEMBERSHIP AND VOTING RIGHTS

4.1 "Association." BMWHA is a Nonprofit Mutual Benefit Corporation charged with the duties and empowered with the rights set forth in this Declaration, its Articles of Incorporation and Bylaws. The affairs of the Association shall be governed by this Declaration and the Articles of Incorporation and Bylaws of the Association.

4.2 "Board" The Association shall have a governing body or "Board of Directors" consisting of five (5) directors who shall be elected by the vote of the total membership. Voting shall be by secret ballot if so requested by any member. A director's term of office shall be from election at the annual membership meeting until the election of a successor director at the next annual membership meeting.

Except as otherwise provided by this Declaration, its Articles of Incorporation, its Bylaws, and California Nonprofit Corporation laws, the Board shall have the authority to act on behalf of the Association

without the prior approval of its members.— It may elect officers, appoint committees, enter into contracts for goods and services and delegate its authority to such officers, committees, agents and employees and do any other lawful act on such terms and conditions it deems appropriate to carry out the rights, obligations and duties of the Association and the Board itself as provided by this Declaration, the Articles of Incorporation and the Bylaws.

4.3 "Membership." Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to ownership of the lot and may not be separated from it. Any transfer of title to a lot shall automatically transfer the appurtenant Association membership to the new owner. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, determine but, in no event, shall more than one (1) vote be cast with respect to any one (1) lot. Any lot owner owning more than one (1) lot shall be entitled to one (1) vote for each lot owned.

4.4 "Majority Approval Required." Except as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provision of Section 4.5, all matters requiring the approval of the Association membership shall be deemed approved if a majority of the total members eligible to vote assent to them by written consent, or if approved at any duly called regular or special meeting at which a quorum (defined as a majority of the total members eligible to vote) is present, either in person or by proxy, by a majority of total members represented.

4.5 "Vesting of Voting Rights." Each owner's voting rights in the Association shall become vested only after the conveyance and close of escrow of the owner's lot and at such time as assessments could be levied by the Association. Members of the Association delinquent in their homeowners dues will not be entitled to voting status.

4.6 "Rules." The Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules to be known as the "Association Rules" governing, among other things, the use of the Common Area, collection and disposal of refuse and minimum standards of maintenance.

4.7 "Enforcement." The Association or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any owner, to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so hereafter. The Association shall further have the right to discipline members for violations of this Declaration, the Association Articles of Incorporation, Bylaws, and/or its Rules and Regulations.

ARTICLE V

FUNDS AND ASSESSMENTS

5.1 "Creation of Obligation and Lien." The owner of a lot is deemed to covenant to pay to the Association annual assessments of charges, and special assessments for capital improvements and reconstruction as provided for by this Declaration by accepting a deed to the lot, whether or not it shall be so expressed in such deed. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable legal fees, shall be a charge on the land and shall be a continuing lien on the property against which each such assessment is made. Each such assessment, together with any late charge, interest, costs and reasonable legal fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by those successors.

5.2 "Purpose and Use of Assessments." The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and the Property and for the improvement and maintenance of the Common Area, including the roadways.

The Association shall maintain an operating fund into which the Board shall deposit all funds paid to it as annual and special assessments. Said funds shall be held in trust by the Association for the use and benefit of the Association, as herein above indicated.

5.3 "Annual Assessments." The Board shall establish the amount of the annual assessment as provided in Section 5.9 but may increase the annual assessment by no more than twenty percent (20%) over the annual assessment for the previous year unless a greater increase is approved by a majority of the Association members voting, whether in person or by written proxy, at a duly noticed meeting of the Association.

5.4 "Special Assessments." In addition to the annual assessments authorized above, the Board may levy special, one-time assessments, if the Association's funds are, or will be inadequate to defray, in whole or in part, the cost of construction, reconstruction, repair or replacement of capital improvements upon the Common Area.

The Board shall not levy special assessments which totaled together exceed five percent (5%) of the budgeted gross expenses for the Association for fiscal year in which the special assessments are levied unless each and every special assessment exceeding the five percent (5%), whether in whole or in part, is approved by a majority of the Association members voting, whether in person or by written proxy, at a duly noticed

meeting of the Association. Except as provided in Section 5.5, every special assessment shall be levied on the same basis as prescribed for the levying of annual assessments.

5.5 "Emergency Special Assessments." The restrictions in Sections 5.3 and 5.4 on assessment increases do not apply to increases necessary to finance resolution of emergency situation due to any of the following:

- (a) an extraordinary expense required by an order of court;
- (b) an extraordinary expense necessary to repair, or maintain the Project, or any portion of it that the Association is responsible to maintain, when a threat to personal safety on the property is involved;
- (c) an extraordinary expense necessary to repair or maintain the development, or any portion of it, that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required by California Civil Code Section 1365, provided that prior to the imposition, much less collection, of any such assessment under the authority of this subdivision, the Board must pass a written resolution giving specific reasons as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen. The Board shall distribute a copy of the resolution along with the notice of assessment when it is sent to the owners.

Any such emergency special assessment shall be included in calculating the excess over the total gross expenditures for purposes of the restrictions in Section 5.4 and shall be included in the increase over the previous year's maximum annual assessment for the purposes of the restrictions in Sections 5.5.

5.6 "Owner Noncompliance/Damage Assessment." After complying with the due process requirements set forth in the Bylaws, the Board may impose a monetary sanction and levy an assessment against a particular lot or group of lots to reimburse the Association for costs incurred for any of the following;

- (a) in repairing damages to the Common Area, or any improvements to the Common Area or personal property located thereon, for which the owner or owners were responsible;
- (b) or in bringing the owner or owners and/or the lot or lots owned into compliance with this Declaration, the Articles of Incorporation, Bylaws or the Association rules.

An assessment under this Subsection may not become a lien against an owner's lot that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b, and 2924c, or successor sections.

5.7 "Notice and Quorum for Assessment Increase." Any actions by

Members of the Association, required under Subsections 5.3 and 5.4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. Notice shall be given in the manner prescribed for special meetings in the Bylaws. At the first such meeting called, the presence of members, either in person or represented by written proxies, entitled to cast fifty percent (50%) of the total voting power of the Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned to a subsequent time and place by a majority of the votes represented, either personally or by written proxy. The subsequent such meeting shall be subject to the same notice requirement specified in this Declaration and the Bylaws for Special Meetings, and the required quorum at such subsequent meeting shall be a least thirty-three percent (33%) of the total voting power of the Association, either personally present or represented by written proxy.

5.8 "Rate of Assessment." Both annual and special assessments as set forth in Sections 5.3 and 5.4 must be fixed at an equal rate for all lots. Each lot is required to pay the same amount. This provision of this Declaration does not apply to Owner Noncompliance Damage assessments levied by the Association for expenses incurred in bringing a member and his lot interest into compliance with the provisions of the governing instruments of the Association.

5.9 "Annual Assessments; Due Dates." The Board of Directors shall adopt an annual budget for the Association and thereby establish the amount of the annual assessment in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner not less than fifteen (15) days prior to the annual BMWA meeting. The due date shall be established by the Board.

5.10 "Non-Payment of Assessments: Late Charges, Interest and Remedies of the Association." Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, but not greater than the maximum rate of interest allowed by law. In addition, the Association may levy a late charge against the lot owner for the delinquent payment of any assessment set forth in this Declaration. An assessment is delinquent thirty (30) days after its due date, and the late charges shall accrue from the first day following the due date. The amount of the late charge shall be set by the Association and shall not exceed ten percent (10%) or ten dollars (\$10.00), whichever is greater, or the rate set forth in Section 1366(c) of the California Civil Code or successor section. A late charge may not be imposed more than once for the delinquency of the same payments. However, the imposition of a late charge on any delinquent payments shall not eliminate or supersede charges made on any prior delinquent payments.

A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable legal fees), and penalties as may be authorized under this Declaration shall become a lien on the lot against which the assessment was levied on recordation

of a notice of delinquent assessment in the office of the County Recorder of the County of Nevada. The notice shall describe the amount of the delinquent assessment of installment, the related charges authorized by this Declaration, a description of the lot, the name of the owner, and, if the lien is enforceable by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by an officer of the Association, or any employee, or agent, of the Association authorized to do so by the Board.

Unless the Board considers the immediate recording of the notice to be in the best interests of the Association, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

The Board may enforce any assessment lien resulting from the provisions of this Declaration by filing an action for judicial foreclosure or, if the notice of delinquent assessment contains the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in accordance with the requirements of Civil Code 2924c(b)(1) or successor section to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code 2924, 2924b, 2924c, 2924f, 2924g, and 2924h. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a substitute trustee whose substitution is in accordance with the provisions of Civil Code 2924a. The Association may bid on the lot at the sale, and may hold, lease, mortgage, and convey the acquired lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses, including late payment penalties, loss of interest, costs of collection, and attorney's fees incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, on receipt of a written request by the owner, a notice of rescission of the declaration of default and demand for sale.

No owner may waive, or otherwise escape, liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot. Each owner, to the extent permitted by law, waives the protections of any declared homestead or statutory homestead exemption under the laws of California as applied to any action to enforce any assessment levied by the Association.

5.11 "Subordination of the Assessment Lien to Deeds of Trust." The lien for any assessments provided for herein shall be subordinate to the lien of any first Deed of Trust against any owner's lot or lots. Transfer of title to a lot as the result of an exercise of a power of sale, or of a judicial foreclosure involving a default under the first Deed of Trust shall extinguish the lien of assessments which was due and

payable prior to the transfer of title to the lot. However, the transfer of title to a lot as the result of a judicial foreclosure, or exercise of a power of sale, shall not relieve the new owner, whether it be the former beneficiary of the first Deed of Trust or another person, from liability for any assessment thereafter becoming due or from the lien securing it.

ARTICLE VI

ARCHITECTURAL/AESTHETICS COMMITTEE

6.1 "Purpose." The purpose of the Architectural/Aesthetics Committee ("AA Committee") will be to review and approve proposed improvements such as exterior architectural design and general landscaping plans within the Project. It will not be the purpose of the AA Committee to deprive the individual owner of a dwelling of unique design or quality, but to protect the Association as a whole from intrusive manmade aesthetics, nonconforming designs or construction of inferior quality. In this connection, in the case of hardship or other good reason, exceptions to any of the architectural restrictions contained in this Declaration may be made by the AA Committee after proper application and after making written findings of the need for the exception(s) and the appropriate mitigation measures, if any required.

6.2 "Architectural/Aesthetics Committee Membership, Organization and Terms of Office." The AA Committee shall consist of no less than three (3) nor more than five (5) persons appointed by the Board of Directors. Prior to each annual Association meeting the Board shall replace or renew at least two (2), but not more than three (3), members to serve for the next two (2) years on the AA Committee subject to the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws. Further, each appointee shall be a member of the Association throughout the term of appointment. Loss of Association membership shall require replacement by the Board for the remainder of the term. Appointments or renewals will be announced at the homeowners meeting.

6.3 "Design Review Applications." Any construction, reconstruction, refinishing or alteration of an improvement, or any part of the exterior of any improvement upon any lot is prohibited, until and unless, the owner of such lot first obtains the approval therefor from the AA Committee and otherwise complies with all of the provisions of this Declaration. The requirement for prior approval of an improvement shall not apply to temporary living quarters, such as a trailer, when it is placed on the lot after owner has obtained, by Preliminary Approval of Plans and Specifications, for construction of a residence under this Section provided that the temporary quarters comply with all County's Land Use and Building Code requirements, including permits and fees, at all times it is on owner's lot. Owner shall remove the temporary quarters after notice from County of noncompliance with its permit requirements if not corrected within the time permitted by County's notice, or upon Association's revocation of approval of the residential

improvement for noncompliance as provided for by this Section or upon Final Acceptance of the residential improvement whichever one of these events occurs first.

The Association may remove, on such notice as it deems appropriate, any improvement constructed, reconstructed, refinished, altered or maintained in violation of this Section, including temporary quarters. Owner thereof shall reimburse Association for all expenses incurred by it in removing said improvement as provided by Subsection 5.6(b). Any owner proposing to construct, reconstruct, refinish or alter any part of the exterior of or any improvement on or within his lot, or to perform any work which under this Section requires the approval of the AA Committee shall apply to the AA Committee for approval as follows:

(a) "Submission of Preliminary Plans." The owner of each lot upon which construction is contemplated shall submit to the AA Committee a set of preliminary working drawings or plans which consist of: a plot plan, floor plan, elevation and details showing size, species and grade of all materials of the dwelling envelope visible from the Common Area or any other lot. Upon review, the AA Committee may request additional drawings for clarifications. "Dwelling and/or Structure Envelope" shall mean exposed foundations and attached retaining walls, walls, fascia and soffitt surfaces, roof, window and door treatment and other visible features such as fireplaces, porches and porticos, carports and garages (whether attached or detached). Trim, gutter and downspout considerations are for purposes of color scheming only.

(b) "Submission of Final Plans and Specifications." Following review and preparation of written findings on the preliminary plans, two (2) sets of final plans and specifications shall be submitted to the AA Committee for its approval. One set of final plans will be returned at the time of approval. Such plans and specifications shall define the floor plan, the structure's envelope physical features and elevations, uses of materials, heights and dimensions, site placement, fences, grading, drainage plans, access, general landscape and patio plans and any other pertinent data as may be required to fully illustrate the intended design, construction and useages. Physical samples of exterior materials and color shall be submitted for approval.

Final approval by the AA Committee shall not relieve the owner from complying with any requirements of any public authority having jurisdiction and shall not constitute a representation or guarantee by the AA Committee or any member of the AA Committee as to the structural sufficiency of any construction. However, every owner must obtain final written approval by the AA Committee prior to the submission of the plans and specifications to any public authority whose approval also must be obtained. Approval of the AA Committee of any plans or specifications, shall not be deemed to be a waiver by the AA Committee of its right to object to any of the features or elements embodied in such plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for any other building sites.

(c) "Inspection for Conformance to Plans." During the construction and for a reasonable period, not to exceed ten (10) days after completion of construction, any member of the AA Committee designated to inspect, or its designated agent, if no member is so designated by the AA Committee, may after reasonable notice, as defined in Section 3.5, to the owner, or his contractor, if the owner is not available or has designated the contractor as his agent for inspection, enter into and inspect any lot, and any improvements thereto for the compliance with approved submissions. Any deviations and nonconformity shall be set forth in a notice of noncompliance issued by the AA Committee and shall be corrected prior to final acceptance as set forth in Subsection 6.3(h) below. The AA Committee, its designated member(s), or designated agent, acting in good faith shall not be liable for trespass for any entry made in good faith after giving reasonable notice to inspect a lot and its improvements for compliance.

(d) "Form of Approval." All approvals by the AA Committee shall be in writing and may be conditioned upon the submission by the owner, or the owner's architect, if any, of such additional plans and specifications as the AA Committee shall deem appropriate for the purpose of insuring that the construction of the proposed improvement shall be in accordance with the approved plans. However, plans, drawings, and specifications which have neither been approved nor rejected within thirty (30) days from the date of their submission to the AA Committee shall be deemed approved. One set of plans, as finally approved, shall be retained and maintained by the AA Committee in its archives as a permanent record of the improvement.

(e) "Proceeding with Work." Upon receipt of approval from the AA Committee, the owner shall as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one (1) year from the date of such approval. If the owner shall fail to comply with this Subsection, any approval given pursuant to Subsection 6.3(d) above, shall be deemed revoked unless the AA Committee, upon written request of the owner made prior to the expiration of said one (1) year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the AA Committee that there has been no change in the circumstances upon which the original approval was granted.

(f) "Failure to Complete Work." The owner shall, in any event, complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except, and for so long as such completion is rendered impossible or would result in great hardship to the owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the owner or his agents. If the owner fails to comply with this Subsection, the AA Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the

provisions of Subsection 6.3(g) as though the failure to complete the improvement was a noncompliance with approved plans.

(g) "Noncompliance." If the AA Committee finds that the construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the owner, in writing, of such noncompliance within thirty (30) days of receipt of a notice of completion from the owner, specifying particulars of noncompliance, and shall require the owner to remedy such noncompliance. If the owner fails to remedy the noncompliance upon the expiration of thirty (30) days from the date of such notification, the AA Committee shall notify the Board, in writing, of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the noncompliance is given to the Board by the AA Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the owner, to the AA Committee and, at the discretion of the Board, to any other interested party.

At the meeting, the owner, the AA Committee, the Board and, at the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether noncompliance exists and, if so, the nature of the noncompliance and the costs of correcting or removing the noncomplying conditions. If a noncompliance is found to exist, the Board shall require the owner to remedy or remove the noncomplying improvement within forty-five (45) days from the date of the Board ruling.

If the owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant; then the Board, at its option may, either remove the noncomplying improvement or remedy the noncompliance. The owner shall reimburse the Association for all expenses incurred in connection with the removal or remedy upon demand by the Board. If such expenses are not promptly repaid by the owner, the Board shall levy a Owner Noncompliance/Damage Assessment pursuant to Subsection 5.6 of this Declaration. In addition, this Declaration shall be deemed to vest the Board and, at the discretion of the Board, the AA Committee as its agent, with the right to bring a proceeding in equity to enforce the provisions of this Declaration and/or the decision of the Board.

If for any reason the AA Committee fails to notify the owner of any noncompliance within thirty (30) days after receipt of said notice of completion from the owner, the AA Committee shall be deemed to have given final acceptance of the improvements as being in accordance with the approved plans.

(h) "Final Acceptance." The AA Committee shall issue a written final acceptance of the improvements, or written notice of noncompliance within thirty (30) days after notice of completion. Each owner agrees he will

not commence using the structure or structures on the lot until final acceptance from the AA Committee has been obtained in writing.

(i) "Liability." Neither the AA Committee nor any of its members shall be liable to the Association or to any owner for any damage, loss or prejudice suffered or claimed on account of any of the following:

(1) Approval or disapproval of any plans, drawings and specifications, whether or not defective;

(2) Construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

(3) Development of any property within the Project, provided, however, that such member acted in good faith on the basis of the information, whether accurate or otherwise possessed by him or her.

The AA Committee and any of its members may, but is not required to, consult with or hear the view of the Association, or any owner, with respect to any plans, drawings, specifications or any other proposals submitted to the AA Committee and any such consultation or listening shall not alter the rules of liability set forth above in this Subdivision.

(j) "Waiver." The approval by the AA Committee of any plans, drawings or specifications for any work of improvement or other matter requiring its approval, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawings, specification or other matter submitted to it for approval at a later date.

(k) "County Requirements." The application, review and approval of proposals, plans or other submittals shall in no way be deemed to be satisfaction of, or compliance with, any building permit process, or any other governmental requirements. The owner is solely responsible for complying with and satisfying the building permit/use permit processes and other governmental requirements.

6.4 "Meetings." The AA Committee shall meet from time-to-time as necessary to properly perform its duties. The vote, or written consent, of a majority of the members shall constitute an act by the AA Committee. The AA Committee shall keep and maintain a record of all actions taken by it at its meetings and otherwise. The AA Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in the performance of any and all AA Committee functions.

6.5 "Architectural/Aesthetics ("AA") Committee Rules." The AA Committee may, from time-to-time, and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural/Aesthetics ("AA") Committee Rules." Said rules and regulations shall interpret and implement the provisions of Articles VI and VII and this Declaration generally, by setting forth the standards

and procedures for AA Committee review and guidelines for architectural design, placement of buildings, landscaping in the Common Area, color schemes, exterior envelope finishes, features and materials which are recommended, or required, for use in the Project.

ARTICLE VII

ARCHITECTURAL/AESTHETIC RESTRICTIONS

7.1 "Preservation of Environmental Values." The AA Committee shall consider all construction and manmade alterations in the context of a development plan designed to preserve the natural ambiance, environment and ecology of the Project for the benefit of all the owners. All existing trees, water courses, rock outcroppings and other natural features of the terrain shall be taken into consideration in the design of "improvements" to minimize the impact of such "improvements" on the natural setting of the Project.

Any structure located on any residential lot shall be subject to the design review approval of the Association to the extent that it is visible to other lots and/or Common Area and thus affects the Project aesthetics as well as being subject to the Nevada County design review authority in accordance with the Nevada County Land Use and Development Code. "Structures," as used herein, shall include buildings, enclosures, fences, shelters, swimming pools, spas, tennis courts, athletic fields, bridges, gateways, sheds, well houses, and any other appurtenances which may affect the Project aesthetics.

(a) "Environmental Restrictions on Lot Improvement." Except to the extent reasonably necessary for the construction, reconstruction or alteration of any improvement and, until approved by AA Committee, the owner shall be prohibited from engaging in any of the following:

- (i) any excavation or landfill;
- (ii) any change in natural or existing drainage for surface and/or subsurface waters;
- (iii) from removing or destroying any living tree or other vegetation having a height of six feet (6') or more and a trunk diameter of six inches (6") or more at a line four feet (4') above ground level.

(b) "Restoration of Environmental Damage." The Association may restore a lot that has been altered without prior AA Committee approval to the condition that existed prior to any of the unauthorized alterations. Restoration of the lot may include any or all of the following,

to the extent possible and appropriate as determined by the AA Committee;

(i) removal of any and all power and/or utility conduit, piping, wires, and related equipment;

(ii) removing permanent and/or temporary improvements and structures, regrading, rerocking with material as similar as possible to the prior rocks, stone, gravel, etc.,

(iii) reseeding and replanting with vegetation as similar as possible to the prior vegetation in the immediate vicinity, removal and replacement of mutilated or destroyed trees with trees of similar species and size to the prior trees and/or remaining trees in the immediate vicinity of the destroyed or mutilated trees.

(c) "Costs of Environmental Restoration." Pursuant to Subsection 6.3(g), the owner violating the requirements of this Section shall reimburse the Association for all expenses incurred by it in performing its obligation under this Section.

7.2 "On Site Construction."

(a) "Setbacks." All dwellings shall be at least forty feet (40') apart with minimum setbacks from property line(s) of fifty feet (50') from the edge of the road right-of-way (measured as seventy-five feet (75') from the road centerline) in the front, twenty feet (20') at the sides and fifty feet (50') in the rear of all lots. Corner lots shall have front setbacks on both road frontages. The AA Committee may vary, through specific exceptions for cause, these setback minimums for an individual lot except Lots 1 through 12. Lots 1 through 12 have a mandatory fifty foot (50') rear setback established by Nevada County as a condition of its approval of the master plan for BANNER MOUNTAIN WOODLANDS. Any other specific exception, or variance, allowing use of the lesser minimums set forth above shall require the written approval of the AA Committee based upon specific findings of the cause(s) and reason(s) for the exception(s).

(b) "Location on Lots." The location of the structure, or structures, on the building site and any landscaping, as visible to adjacent lots and Common Area, shall bear an overall relationship to these adjacent properties so as to create an aesthetically pleasing overall appearance.

(c) "Lot Coverage." The AA Committee shall determine lot coverage, including location and footprints of all structures. The maximum building coverage of each lot, exclusive of roof overhangs, shall be fifteen thousand (15,000) square feet. "Building's coverage" includes decks, porches, breezeways, patios, walkways, pools, outbuildings and other structures but does not include driveways and parking areas. The overall impervious surface of the lot which is the total of building coverage area plus driveway and sealed parking area must not exceed thirty percent (30%) of the total lot area.

(d) "Fences" No solid and/or restricted movement fence shall be placed on any lot, except around the single-family dwelling within the "building coverage" area, gardens, cultivated areas and animal enclosures. Solid and/or restricted movement fences will be considered appropriate to restrict child and pet movement into or out of potentially hazardous areas or to protect formal gardens, but not general landscaping. Perimeter fencing shall be limited to open-type material that is reasonably unnoticeable or can be appropriately screened from easily being seen from any Common Area or neighboring dwellings. The purpose of this restriction is to provide protection of the residential agricultural and domestic use of the property and still facilitate the free movement of wildlife throughout the area and in order to preserve the aesthetics of the Project. Barbed and woven or welded type mesh fencing is not permitted unless specifically approved by the AA Committee.

All fences, including the exact location, style, material, color, height and function, and fully detailed for AA Committee review, shall be subject to the written approval of the Committee prior to installation. The Owner shall maintain and repair the fences on her/his lot. If the Owner fails or refuses to fully and faithfully comply with and conform to the provisions of this Section the Association shall have the right to enter upon said lot and perform such work as may be necessary to fulfill the requirements of this Section, charging the costs to the Owner pursuant to Section 5.6.

(e) "Landscaping" Except in cases where dwellings are being constructed by builders for resale, general landscaping plans shall be submitted with the specifications. However, such dwellings not sold but which become occupied shall no longer be excluded from meeting landscaping requirements as herein and hereafter specified. Plans must be approved in writing prior to the commencement of any work and shall include general type and location of plants, materials and irrigation systems. Permanent landscaping shall be installed around a dwelling within a reasonable time after completion or occupancy of the dwelling not to exceed twelve (12) months for the front yard and not more than eighteen (18) months for the side and rear yards, as to the portions of these yards that are visible to the adjacent lots and Common Area. Landscaping shall be maintained in a neat and orderly condition at all times after installation in order to be a pleasant appearance for the other owners, tenants, their guests and invitees.

The Association hereby reserves the right at all times after reasonable notice of no less than fifteen (15) days to the owner of unmaintained or inadequate landscaping to enter onto inadequately planted or maintained unimproved lot, or unoccupied lot, to plant, replant, cut, trim, remove, replace and/or maintain hedges, trees, shrubs and flowers with said lot and/or cultivate and/or remove plants on any portion of the lot. Owner shall be responsible for costs incurred by the Association in performing these tasks. Neither the Association nor any of their officers, agents or employees shall be liable for any trespass or

subsequent damages for any of the above actions taken after notice is given as set forth.

(f) "Stabilization." All building pads, cuts, fills, driveways shall be stabilized by compaction, seeding, mulching, rocking, terracing, landscaping or other structural method or combination of the above.

7.3 "Basic Structure Envelope Requirements."

(a) "Type and Character of Design." The exterior design of all the improvements of each lot shall be compatible to the overall atmosphere of Banner Mountain Woodlands and approval thereof shall be in the sole discretion of the AA Committee. Decisions of the AA Committee shall be final. Plywood (plain, batten or scored as with T-111) siding is not permitted, nor is solid stock bat'n board approved for exterior use.

(b) "Colors/Painting." All envelope colors and materials, including roofs, shall be set forth in the plans and specifications so as to indicate where the colors and materials will be used on the proposed improvement. All improvements shall be painted or stained with the exception of those portions constructed of brick, masonry or stone. All colors and materials must be approved in writing prior to construction. Color samples shall be submitted with plans and specifications. As in the case of the "Type and Character of Design", the AA Committee's decisions as to colors and materials shall be final.

(c) "Residence Size Requirements." No residence shall be erected on any of the lots with a total floor area of the main structure, exclusive of garages, carports, porticos, patios, decks, porches, exterior stairways and landings, of less than two thousand five hundred (2,500) square feet. Changes in this Section 7.3(c) will not be incumbent on any "owner" with title predating the effective date of this second amendment. Residence size requirements as set forth in the original Declaration will apply to those owners.

(d) "Maximum Height." The maximum height of any structure shall be thirty-five feet (35'), or three (3) stories, whichever is less. Any exception to this limitation is subject to the approval of a conditional use permit in accordance with the procedures of the Nevada County Land Use and Development and Zoning Ordinances as well as the prior written approval of the AA Committee.

(e) "New Structures/New Materials." No secondhand materials shall be used in construction of any improvement(s) without the prior written approval of the AA Committee with the exception of "used" brick and/or stone. No improvement(s) of any types or kind shall be moved onto a lot from any other site without the prior written approval of the AA Committee.

(f) "Garages." Each dwelling shall have at least a two (2) car

garage, either attached to it, or as a separate detached structure. No garage shall face the street, unless, in the discretion of the Committee, it cannot otherwise be reasonably situated on the lot.

(g) "Driveways." All driveways shall be constructed of a minimum two inch (2") asphalt or concrete type all weather material over a compacted appropriate base. Winter weather conditions make gravel and "chip and seal" materials unacceptable. All driveways shall have a minimum width of sixteen feet (16'), a minimum vertical clearance of thirteen feet, six inches (13'-6") and a maximum grade of twelve percent (12%). Driveways must be cleared of significant fire hazard vegetation for ten feet (10') on either side. "Dead end" driveways must have turnarounds of the cul-de-sac or hammerhead design and conform to the Gold Flat/Forty-Niner Fire Protection District, or successor Fire District, requirements. Road width may be reduced to twelve feet (12') with two foot (2') shoulders for driveways if less than one hundred fifty feet (150') and the maximum grade increased to fifteen percent (15%) with prior written approval from the Committee.

(h) "Roof Materials." Roofing materials shall be any of the following types: clay, slate, fired and concrete tile products. Substitute materials may be submitted to the AA Committee for approval. Wood shakes or shingles are not an acceptable substitute, whether treated for fire resistance or otherwise. Composition shingles must be "architecturally designed" to be considered for approval as a "like quality" substitute.

(i) "Solar Devices." The requirements for architectural control shall not be construed as unreasonably restricting solar energy and water saving devices where opportunities exist for effectuating their use consistent with overall architectural plans and purposes.

(j) "Licensed Contractor." All structures shall be constructed by or under the supervision of contractors, architects or structural engineers licensed under the laws of the State of California.

(k) "Prohibition on Factory-Built, Prefabricated, Manufactured and Modular Housing." No residence shall be erected or constructed on any lot which shall be considered to be a factory-built, pre-cut, prefabricated or modular house, or any substantial portion of which residence is to be erected or constructed of components manufactured off-site.

7.4 "Alteration, Additions, Remodeling and Redecoration of Exterior Portions of Structures." No alterations of any exterior design or any color on any structure, including additions, shall be made without the prior written approval of the AA Committee. Materials used for any such approved alterations must be harmonized and complement the original improvements. No prior approval is required to restrain or repaint any improvement in the same color scheme as previously approved.

ARTICLE VIII

PERMITTED AND PROHIBITED LOT USES

8.1 "Uses of Lots." No lot will be used, or any portion of any lot, for any purpose other than a single family residence excluding those home business occupations permitted by Section 8.5. This provision shall not preclude detached garages, senior cottage housing, caretaking housing, guest housing and recreation building(s) and temporary housing during construction as permitted by Section 6.3 which are also in accordance with the provisions set forth by the Nevada County Land Use and Development Codes.

8.2 "Animals." No animals of any kind shall be raised, bred, or kept on any lot, or in any of the Common Area, except that dogs, cats or other customary household pets in a reasonable number may be kept in a residence or a properly enclosed structure. In no instance shall animals be bred, or kept for any commercial purpose. Any animal deemed to be a nuisance after reasonable notice of at least five (5) days and hearing before a duly noticed meeting of the Board shall be removed from the premises by the owner, or at owner's expense.

8.3 "Garages, Boats and Vehicles." Each owner shall keep his garage in a neat and orderly condition with all exterior storage area enclosed. A garage shall not be used in a manner that prevents the owner from parking his passenger vehicles in it. Boats, trailers and recreational vehicles may be kept and stored inside the garage or in the backyard so long as a fence, or other enclosure, hides them from being seen from neighboring lots, streets and the Common Area.

Except as permitted by the Association, no vehicle, trailer, or boat shall be parked or stored in any Common Area, street or driveway for more than seven (7) days. Vehicles being used in the construction or repair of any of the improvements on the Property, including the Common Area, however, may be stored in said Common Area, street and driveways for a period reasonably necessary to complete the construction or repair.

8.4 "Antennas." No antennas or satellite dishes of any type, whether for radio, TV, CB broadcast and reception, or otherwise, shall be erected or maintained on the outside of any improvement without the prior written approval of the AA Committee.

8.5 "Limitation on Commercial Activities." No business of any kind whatsoever, shall be established, maintained, operated, carried on, permitted or conducted on a lot, or any portion of lot, except for those home occupations permitted by Nevada County Land Use and Development Code, Section L.II 3.21 and any successor section(s).

8.6 "Offensive Activities." No noxious or offensive activity shall be carried on, nor shall anything be done or placed, on a lot which may be, or may become, a nuisance or cause unreasonable embarrassment,

disturbance or annoyance to the other owners, their tenants and guests in the quiet enjoyment of their lots and the Common Area. No owner shall permit excessive noise, including but not limited to, the barking of dogs and other animals, to emanate from his lot that would unreasonably disturb another owner, his tenants, or guests in the quiet enjoyment of his lot or the Common Area.

8.7 "Trash." All garbage and trash shall be placed and kept in covered containers and arrangements shall be made for at least weekly collection. Except for the scheduled collection day, such containers shall be located so as to be not readily visible from neighboring lots and Common Area. No portion of any lot shall be used for storage of building materials, or other materials, other than in connection with approved construction. Covers or tarps used to conceal and/or protect stored materials, firewood, or equipment shall be of a neutral color to blend with its immediate surroundings.

8.8 "Clotheslines." No visible outside clothesline, or other drying apparatus, shall be maintained on any lot without approval of the AA Committee.

8.9 "Signs." No sign of any kind shall be displayed to the public view on or from any lot or Common Area, without the prior approval of the Association, except for one (1) principal builder's sign and/or one (1) "For Sale" sign per lot of customary and reasonable dimensions pursuant to California Civil Code Section 712 or successor section, and in compliance with the Nevada County Land Use and Development Code, Section L.II 26.5 and successor sections.

8.10 "Subdivision of Lot(s) Prohibited." No lot within the Project shall be further divided, redivided or subdivided.

8.11 "No Structural Changes by Owner." An owner shall not make, or cause to be made, any structural changes to his dwelling or other improvements without the prior written approval of the AA Committee.

8.12 "Common Area." No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural, or existing drainage of, or shall destroy or remove any vegetation, tree or shrub from any Common Area or plant any vegetation, tree or shrub within any Common Area.

8.13 "Insurance Hazards Created/Maintained by Owner." Nothing shall be done or kept on any lot that shall cause an increase in the rate of insurance on any Common Area without the prior approval of the Association. No owner shall permit anything to be done or kept on any lot, or portion of a lot, or any Common Area which would result in cancellation of the insurance on a Common Area or which is a violation of any law.

8.14 "Drainage." Each owner shall keep and maintain natural drainage channels, ditches, subdrains from underground water sources and streams,

swales and other drainage facilities located on each lot unobstructed, free of accumulated debris, in good condition and repair and shall provide for the installation of such additional culverts, ditches and other drainage facilities upon the lot as may be reasonably required for proper drainage.

ARTICLE IX

DUTIES AND OBLIGATIONS OF ASSOCIATION

9.1 "Common Area Maintenance." The Association shall maintain, or provide for the maintenance of all the Common Area and their improvements of whatever type or purpose, including, but not limited to, roads, landscaping, trails, lighting and electrical services, erosion control structures and power and utility fixtures and equipment.

9.2 "Property Taxes and Assessments." To the extent that they are not assessed to, or paid directly by the owners, the Association shall pay any and all real and personal taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

9.3 "Insurance." The Association shall have the power and obligation to insure and keep insured, all buildings, improvements and fixtures of the Common Area against loss or damage by fire to the full insured replacement cost as set forth in the Bylaws. The Association may insure the above property any other hazard it deems desirable and appropriate. The Association shall also insure any property, both real and personal, owned by it against loss, damage by fire and such other hazards as it deems desirable and appropriate, naming the Association as the owner and beneficiary of the insurance policy. Premiums for the foregoing insurance is a common expense of the Association and shall be included in the assessments or charges for the use of the Association. The proceeds of any such insurance shall be used by the Board to repair or replace the damaged or destroyed property covered by it, unless otherwise provided for by this Declaration.

The Association shall have the power to and shall obtain comprehensive public liability insurance as it may deem desirable and appropriate, insuring each lot owner and the Association, its Board, Managing Agent, other agents and employees, from any liability in connection with the Common Area.

9.4 "Replacement or Repair of Property." In the event damage to or destruction of the Common Area, or any portion thereof, the Association shall repair and replace the damage utilizing the proceeds of the insurance against the type of loss involved. If the insurance proceeds are insufficient to cover the costs to repair and/or replace the damaged and destroyed property, the Association may make a special assessment to

cover the additional costs pursuant to Section 5.4, in addition to the regular assessments made pursuant to Section 5.3 as a part of the operating budget.

9.5 "Contracting for Goods and Services/Waste Disposal." The Association shall enter into contracts for services, goods and materials as may be necessary to perform its duties, subject to the restrictions of the Bylaws and the laws of the State of California. The Association shall specifically require and facilitate the collection and disposal of solid waste at all dwellings and other Project facilities on at least a weekly basis.

9.6 "Condemnation of Common Area." If at any time, all, or any portion of any Common Area, or any interest herein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in eminent domain, to the extent that the award is not apportioned among the owners by court judgment or agreement between the condemning authority and each of the affected owners in the Project, shall be paid directly to the Association. Any such award to the Association shall be deposited into the operating fund of the Association. The Association shall represent the interests of all of the owners in any proceeding related to such condemnation to the extent that such owners have any interest in the Common Area.

9.7 "Road Maintenance Conditions and Restrictions." The Association shall provide for and monitor, the maintenance of all private roads, emergency access easements, gates and drainage facilities as designated on the Subdivision Map and, more particularly on the Supplemental Data Map. "Maintenance" shall include the removal of snow, water, roadside vegetation and accumulated debris on, or near, the roads or emergency accesses, and shall include the periodic resurfacing of roads and emergency accesses through establishment of a reserve fund or similar funding mechanism until such time as all roads and facilities required to be maintained by the Association have been accepted by the County as regularly maintained public roads.

(a) "Costs." It is hereby agreed and declared that each lot shall bear an equal share of the costs required for maintenance and repairs of the road, emergency access and drainage facilities within the Project.

(b) "Use." The subject roads may be used by all owners of lots within the Project for ingress, egress and/or utilities.

(c) "Maintenance." The right-of-way created along said roads shall be maintained in good, passable condition, under all weather and traffic conditions at a minimum roadbed width of twenty-eight feet (28') with a minimum two inch (2") all weather driving surface over a minimum four inch (4") aggregate base and two foot (2') graded shoulders on each side. The minimum roadbed width shall be thirty-four feet (34') for twenty-five feet (25') on each side of any fire hydrant. The emergency access easement shall have a minimum road width of twelve feet (12') and shall

otherwise comply with all road requirements set forth herein. Gates shall be installed and maintained at each end of the emergency access to prevent unneeded and unauthorized access.

(d) "Repairs." General repairs on the private roads and facilities shall be required when the Board determines that repairs are needed, or when a majority of the members at a duly noticed meeting of the Association vote that repairs are required. Any such vote shall include a general statement of the type and extent of repairs required. The President of the Association shall obtain three (3) bids from reputable licensed contractors for the repairs and accept the lowest of those three bids, subject to the concurrence of the Board. Each owner shall bear an equal share of the cost of repairs regardless of whether said owner voted to authorize repairs or not.

(e) "Individual Damages." Every owner shall cause or allow use of the Association maintained private roads in a manner, which causes damage to the surface thereof as may be determined by the Board of Directors, shall bear as his sole responsibility the costs and expense of repairing such damage, including damage to the drainage culvert and other improvements adjacent to said road. Such damage shall be repaired by the responsible parties within thirty (30) days of written notice.

(f) "Deposit." At the time of submission of an Application for Improvement to a lot to the AA Committee in accordance with Section 6.3 herein, each applicant shall deposit Five Hundred Dollars (\$500.00) with the Association either in cash or by surety. Such deposit may be used by the Association to repair any damage to the roads, drainage facilities, or other Common Area improvement it maintains which is the result of, or identified with, the construction activities on applicant's parcel. Said deposit may also be used for necessary clean-up as outlined in Subsection 9.7(h). The deposit shall be refunded if the proposed plans are disapproved or upon completion of the construction as evidenced by a final inspection and approval under the building permit and upon review and approval of the AA Committee. The provisions of this Section shall not limit the recoverable damages to the Five Hundred Dollar (\$500.00) deposit.

(g) "Acceptance of Dedication." Sections 9.7(a), 9.7(c), and 9.7(d) shall become void upon the acceptance of all publicly dedicated roads by the County of Nevada for maintenance.

(h) "Clean Up." Any activity which causes the depositing of mud, dirt, gravel, rocks, debris or any other unsightly material on the road surface, shoulders, ditches, drainage facilities, or adjacent private parcels shall be removed and/or cleaned up by the property owner responsible for the activity. The clean up shall also include the on-site burning of or removal from the site of project-related tree fellings and up-rooted tree stumps and the removal of visual access of stored building materials and the disposal of construction related trash and debris.

(i) "Reservation of Easements." The following easements over each lot and the right of ingress and egress, to the extent reasonably necessary to exercise such easements, are reserved to the Association and their Licensees.

(i) Easements on, over, and under all private roads/streets in the Project for the following:

(a) installing, maintaining, and operating utilities thereon or thereunder;

(b) drainage control;

(c) for access to any lot, and;

(d) for purposes of maintaining said private roads.

(ii) These easements shall continue until such time as the County of Nevada accepts such private roads for ownership, operation and maintenance of said roads.

(j) "Yearly Fire Safety Clean-up." Each property owner shall take on the responsibility for the clean-up and removal of hazardous roadside vegetation within a distance of twenty feet (20') from the edge of road paving into the property frontage for reasons of fire safety. This clean-up work shall be accomplished prior to July 1st of each year by the property owner. Failure to comply with this requirement shall authorize the Association to hire the roadside vegetation in point cleared and the property owner will then be assessed for the cost as provided in Section 5.6 of this Declaration.

ARTICLE X

DEED OF TRUST PROTECTION

10.1 "Subordination of Association Liens to First Deeds of Trust." Liens created under Article V of this Declaration upon any lot, shall be subject to and subordinate to the rights of any first deed of trust that encumbers all, or a portion of, the Project or any lot made in good faith and for value. Upon the foreclosure of any such first deed of trust, the lien for all regular assessments, and all other assessments that have accrued up to the time of the foreclosure shall subordinate to the lien of the first deed of trust, with the foreclosure purchaser taking title to the lot free of any liens for any assessments that have accrued up to the time of the foreclosure sale. Upon the acquisition of the title to the lot, the foreclosure purchaser shall be obligated to pay only those assessments, or other charges, levied by the Association that become due and payable after the foreclosure purchaser acquired title to the lot.

10.2 "No Subsequent Impairment of Beneficiary's Rights without Consent." No amendment to these restrictions shall affect the rights of any beneficiary under a recorded deed of trust who does not join in the execution of that amendment.

10.3 "Extension of Priority Over Association Lien(s) by Association." By way of a written subordination agreement, executed by the Association, the benefits of this Article may be extended to Deed(s) of Trust not otherwise entitled to those benefits.

10.4 "Limitation on Remedies for Breach of Covenants, Conditions and Restrictions." No breach of any of the foregoing covenants, conditions and restrictions shall cause any forfeiture of title or reversion, or destroy any rights of re-entry whatsoever, but violation of anyone or more of these covenants or restrictions may be enjoined or abated by the Association by action of any court of competent jurisdiction and damages may also be awarded against such violations, provided, however, any such violation shall not defeat, or render invalid, the lien of any deed of trust made in good faith and for value as to said property or any portion thereof, but said covenants and restrictions shall be binding upon and effective against any owner of said property or portion thereof, whose title is acquired by foreclosure.

ARTICLE XI

HOMEOWNERS' ASSOCIATION POWERS, RESTRICTIONS AND REORGANIZATION

11.1 "Mergers and Consolidations." To the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations and entities organized for the same purpose as this Association, provided that any such merger or consolidation shall have the written consent of all members or the consent by a vote of two-thirds (2/3rds) of the members voting in person, or by written proxy, at a meeting duly called for this purpose, written notice of which will be given to all members at least twenty (20) and no more than thirty (30) days in advance. Said vote shall not be effective unless a majority of the members favor the merger or consolidation.

11.2 "Limitation on Participation and Severance." The separately-owned interest(s) in the Project is inseparable from the common interest. No owner of any lot shall transfer or convey less than his entire interest in the Project. Nothing herein shall affect the right of any owner to create a joint tenancy or tenancy in common in his or her entire ownership interest. Further, a tenant of an owner shall not be a member of the Association, but any tenant shall have the right to use and have access to the facilities owned by the Association.

11.3 "Sanctions." In addition to any enforcement rights described in this Declaration and the Bylaws, or authorized by law and subject to any

restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions, against any person, or entity, whose action or failure to act violates, or threatens to violate any provision of this Declaration, excepting Article V, the Bylaws, or the Association rules:

- (a) impose monetary penalties, including late charges and interest;
- (b) suspend voting rights in the Association;
- (c) suspend use privileges for the Common Area;
- (d) commence a legal action for damages, injunctive relief or both.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action brought in the name of the Association on its own behalf, or on behalf of any owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorney's fees. The Association may take more than one of the foregoing enforcement actions against any one violation, or threatened action, provided that a suspension of use privileges, other than for delinquent assessments, shall not exceed thirty (30) days and a monetary penalty, not including late charges for delinquent assessments, shall not exceed One Hundred Dollars (\$100.00) for any one violation. The Association, in its sole discretion, may resolve or settle any dispute, including legal action, under such terms and conditions as it considers appropriate.

The Association may not cause a forfeiture or abridgment of an owner's right to the full use and enjoyment of his or her lot, except by judgment of court of competent jurisdiction, or a decision arising out of arbitration, or on account of a foreclosure, or sale under a power of sale, for failure by the owner to pay assessments duly levied by the Association.

ARTICLE XII

RULES OF INTERPRETATION

12.1 "Severability of Declaration Provision." In the event that any of the provision of this Declaration are held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity or illegality shall not affect the validity of any other provision of this Declaration.

12.2 "Singular Includes Plural and One Gender Includes the Other." The singular shall include the plural and reference to one gender shall include the other, when the context so indicates.

12.3 "Conflict Between This Declaration, the Articles of Incorporation and the Bylaws." In the case of any conflict between this Declaration and the Articles of Incorporation and/or the Bylaws of the Association, this Declaration shall control.

ARTICLE XIII

AMENDMENT OF DECLARATION

13.1 "Term of the Covenants, Conditions and Restrictions." This Declaration shall continue in full force and effect for an unlimited time, unless, and until, it is revoked in accordance with the procedure for amending this Declaration set forth in Section 13.2 below.

13.2 "Amendment Procedure." This Declaration shall be amended only by the vote, or written consent, of not less than two-thirds (2/3rds) of Association members. If the proposed amendment seeks to alter a specific clause of this Declaration that requires a greater percentage to take action under that specific clause, the greater percentage vote will be required to amend that Section. Any amendment of this Declaration must be recorded in the office of the County Recorder of Nevada County and is not in force and effect unless and until recordation occurs.

IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of the Banner Mountain Woodlands Homeowners' Association has executed this SECOND AMENDED DECLARATION on the 12 day of MAY, 1994. The undersigned certifies and declares, under penalty of perjury, that the foregoing Amendment has been approved by the percentage of owners required pursuant to Article XIII of the CC&R's.

By: Jerry D. Vayder

Jerry D. Vayder, President

State of California ;
County of Nevada

On May 12, 1994 before me, P.C. GAGNON, personally appeared JERRY D. VAYDER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that, he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature TC Apple

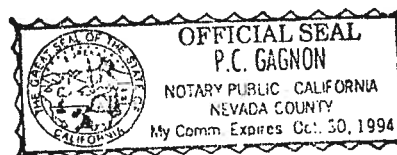


EXHIBIT "A" Page 1 of 5

FINAL MAP 10-89

Banner Mountain Woodlands

BEING A PORTION OF
SECTIONS 16 & 21, T.16 N., R.9 E., M.D.M.
WITHIN THE UNINCORPORATED TERRITORY OF
NEVADA COUNTY, CALIFORNIA

OWNER'S STATEMENT

The undersigned, being the only persons representing any record title interest in the herein subdivided lands do hereby consent to the preparation and recording of this final map of "Banner Mountain Woodlands" and offer for dedication and do hereby dedicate to the County of Nevada the following:

1. For any and all public use, all that portion of that certain strip of land shown and designated as "Banner Mountain Trail" (road strip to be fee ownership), together with (1) wide slope easements lying adjacent and parallel to each side of road strip.
2. For any and all public use, all that portion of these certain strips of land shown and designated as "Dirt Road", "Woodstock Court", "Woodstock Drive" and "Redwood Drive".
3. Rights of Way and easements for water, sewer and poles for overhead and/or conduits for electric, telephone and television service, together with all appurtenances there to, on, over, under or across those strips of land of a width of 10 feet lying adjacent and parallel to road lines of public and/or private roads situate within the boundaries of the subdivision, and on, over, under and across those strips of land shown and designated as "Public Utility Easements" (PUE), together with the right to trim and/or remove only necessary trees, limbs or brush.
4. For drainage ditches, pipes and conduits on, over, under, and across these certain strips of land shown and designated as "Drainage Easements" (DE) together with the right to trim and/or remove only necessary trees, limbs or brush.
5. "Snow Storage Easement" (SSE)
6. Rights of Way for slope easements together with all appurtenances there to, on, over, and across those certain strips of land shown and designated as "Slope Easements" (SE), and on, over, under and across those strips of land of a width of 10 feet lying adjacent and parallel to road lines situate within the boundaries of the subdivision.
7. "No Access Easement" (NAE) for the purpose of denying access to a lot from a roadway where access is undesirable or a more suitable access exists.
8. "Emergency Access Easement" (EAE) for any and all emergency purposes including, but not limited to fire protection.
9. "Temporary Cul-de-Sac Easement" (TCE) to provide a turnaround until the ultimate construction is complete.

Banner Mountain Properties, a California Limited Partnership

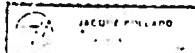
Stephen P. Elder
Stephen P. Elder, General Partner

Inter County Title Co., a California Corporation, as trustee
under deed of trust recorded June 21, 1989 as L.A. 94 16437

William A. Papp
Vice-President
William A. Papp
Asst. Secretary

State of California }
County of Nevada }

In the year of our Independence, 1989, before me, the undersigned notary public, State of California, personally appeared *Stephen P. Elder*, known to me or proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument as the *General Partner* and *Asst. Secretary* of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws, as a resolution of its board of directors.



William A. Papp
Notary Public, State of California

SURVEYOR'S STATEMENT

This final map of "Banner Mountain Woodlands" represents a survey which is true and complete as shown made by me or under my direction in conformance with the requirements of the Subdivision Map Act and local ordinances in July, 1989, and monuments are of the character and occupy positions sufficient to enable the survey to be retraced.

Kenneth E. Baker
Kenneth E. Baker, L.S. 3959
Registration expires 8-30-91

COUNTY CLERK'S STATEMENT

This final map has been examined by me and the subdivision shown is substantially the same as it appeared on the tentative map and any approved alterations thereof and provisions of the Subdivision Map Act and local ordinances applicable at the time of the approval of the tentative map map have been complied with and I am satisfied that this final map is technically correct. This day of *October*, 1989.



Wesley W. Zachary
Wesley W. Zachary, C.L.E. 19264
Registration expires 7-2-91
County Surrogate

TAX COLLECTOR'S STATEMENT

I, Christina Dabbs, the official computing redemptions for the County of Nevada, State of California, do hereby certify that according to the records of my office there are no liens for unpaid taxes or special assessments collected as taxes against the lands subdivided herein, except taxes or assessments not yet payable, but constituting a lien on said

Christina Dabbs
for Christina Dabbs
Nevada County Tax Collector

BOARD OF SUPERVISORS' STATEMENT

This is to certify that the Board of Supervisors of the County of Nevada, State of California, by a motion adopted at a meeting held on the 17th day of *October*, 1989, approved for filing this map of "Banner Mountain Woodlands" consisting of 8 sheets and 1) accepted items 1, 2, 3, 4, 5, 6, 7 & 8) accepted for public use, but did not accept maintenance responsibility for the roads and drainage facilities offered for dedication, item 9) rejected, subject to Section 111.010 of the Code of Civil Procedure, item 4, 6 & 9) and retained the right to accept these items at a later date per Section 111.010 of the Subdivision Map Act. All provisions of the Subdivision Map Act and local ordinances have been complied with regarding deposits this 10th day of *October*, 1989.

Paul J. Luby
Chairman of the Board
Dep. Clerk of the Board

COUNTY RECORDER'S STATEMENT

I, Bruce C. Bolinger, hereby certify that *Nevada County* title certificate no. *20130* was filed with my office and that this plat map was accepted for records and recorded in Book *2* of Subdivisions at Page *242*, Nevada County Records, on the 10th day of *October*, 1989.

Document No. *20130*See *20130**Bruce C. Bolinger*

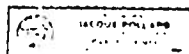
County Recorder

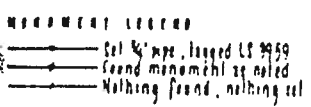
by *Paul J. Luby*
Deputy

State of California }
County of Nevada }

In the year of our Independence, 1989, before me, the undersigned notary public, State of California, personally appeared *Stephen P. Elder*, known to me or proved to me on the basis of satisfactory evidence to be one of the partners of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

Daquie Bolinger
Notary Public, State of California





FILE NO. 100-36889

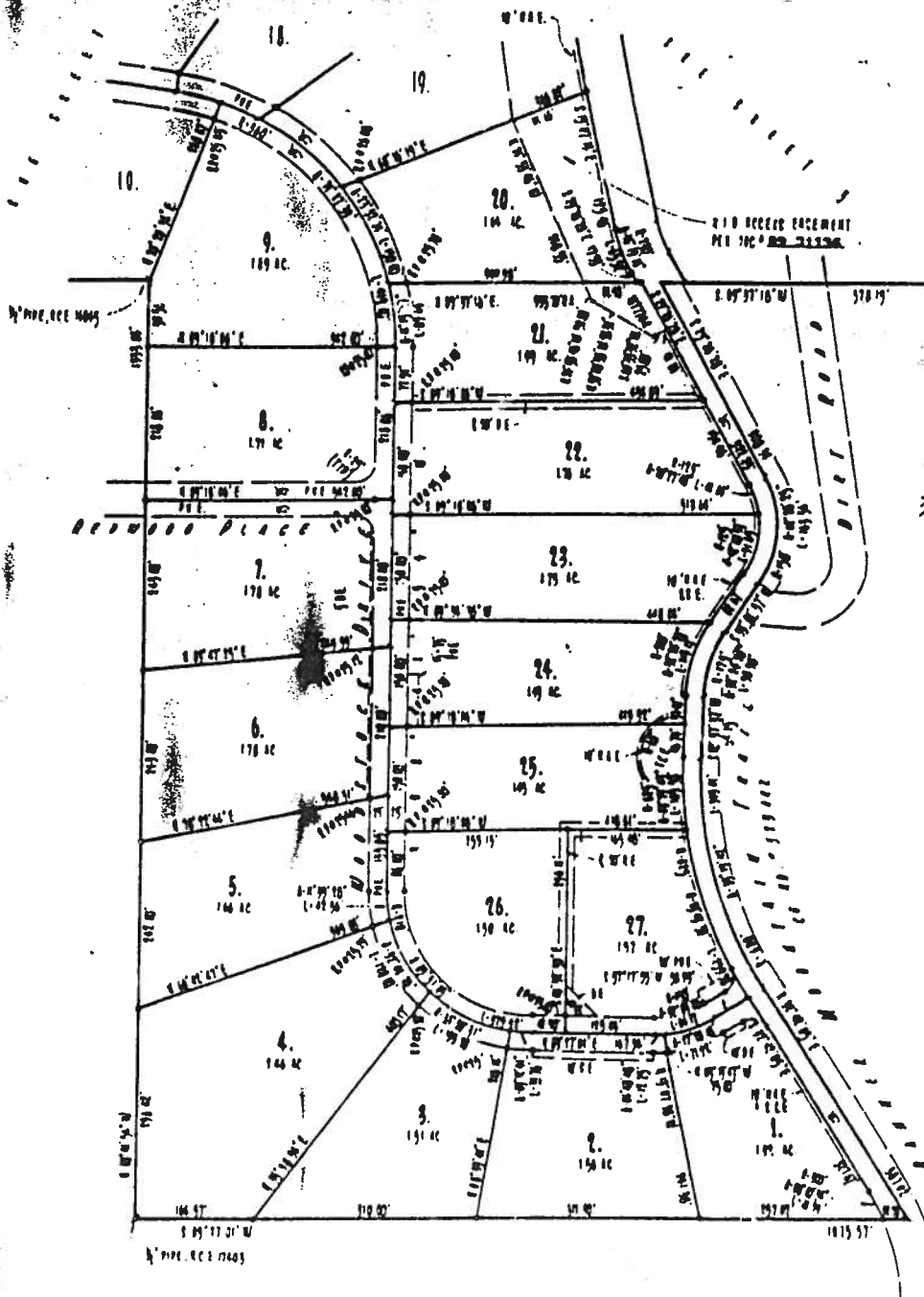
Banner Mountain Woodlands

BEING A PORTION OF
SECTIONS 16 & 21, T. 16 N., R. 9 E., M. 2 D.M.
WITHIN THE UNINCORPORATED TERRITORY OF
NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING, INC.
416 DEARD STREET, P.O. BOX 497, NEVADA CITY, CALIF.

94 17457

EXHIBIT "A" Page 3 of 5



Surveyed by
J. E. Blum
1994

North
Scale 1"=100'

TINEL MAP 10-89

MONUMENT LEGEND
 —●— Sel. W. pipe, tagged L.S. 9959
 —●— Found monument as shown
 ——— Nothing found, nothing set

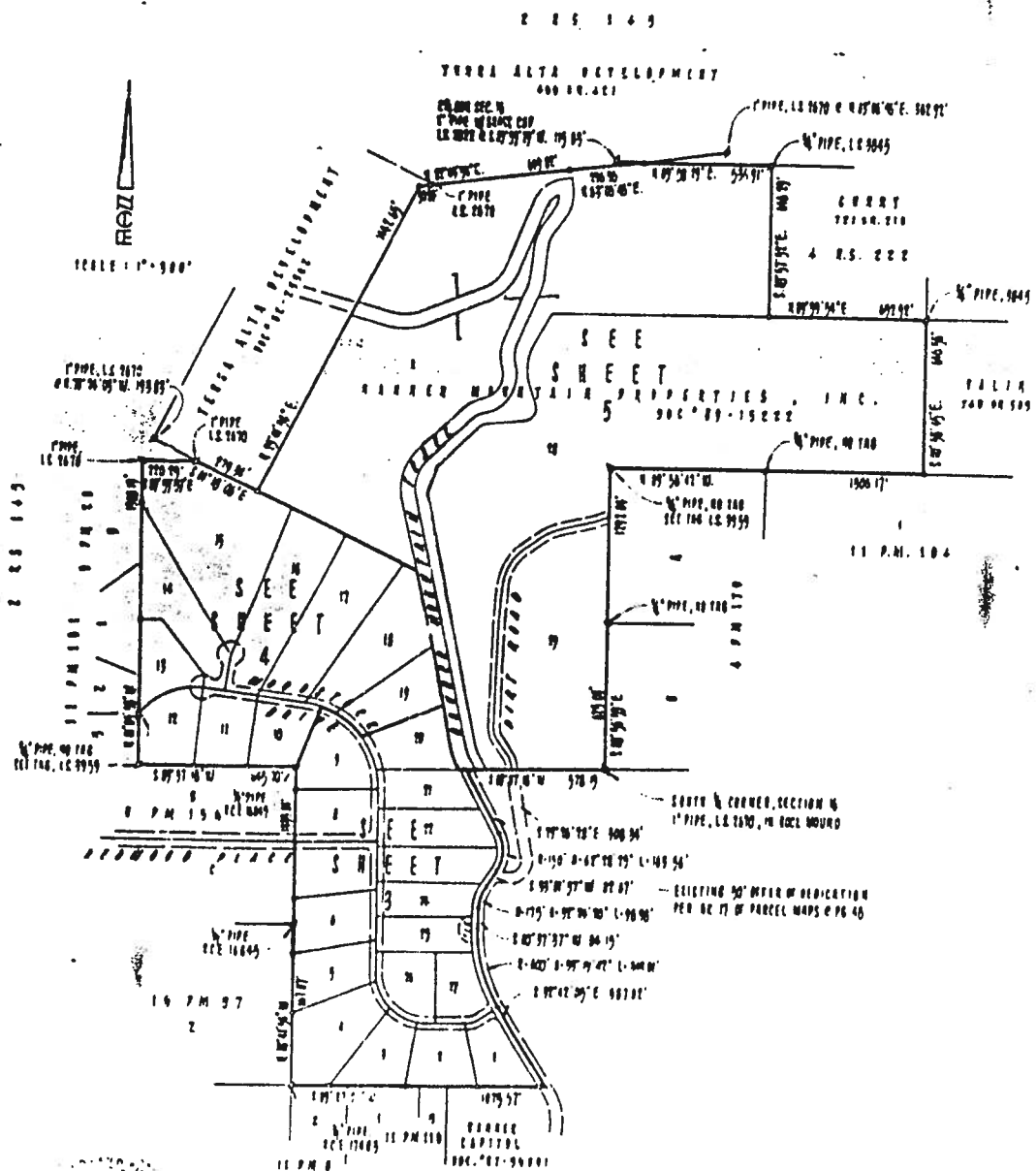
Banner Mountain Woodlands

BEING A PORTION OF
 SECTIONS 16, 21, T.16 N., R.9 E., M.D.M.
 WITHIN THE INCORPORATED TERRITORY OF
 NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING, INC.
 10000 STREET, PO BOX 1000, NEVADA CITY, CALIF.

1994 3 11 2

EXHIBIT "A" Page 2 of 5



Handwritten signature and date: 10/15/03

MONUMENT LEGEND
 ——— 1/2" 1/4" pipe, tagged 10/15/03
 ——— Sound monument as noted
 ——— Nothing found, nothing set

DATE OF SURVEY
 All bearings shown herein are based upon monuments found as established by Book 17 of Parcel Maps, Page 45, Nevada County Records

Banner Mountain Woodlands

BEING A PORTION OF
 SECTIONS 16, 21, T.16 N., R.9 E., M.10 D.M.
 WITHIN THE INCORPORATED TERRITORY OF
 NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING, INC.
 1100 1/2 STREET, P.O. BOX 1000, NEVADA CITY, CALIF. 95959

