

BIG POLE ESTATES HOMEOWNERS ASSOCIATION
WASATCH COUNTY, UTAH 84032

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND MANAGEMENT POLICIES
FOR
BIG POLE ESTATES
A Wasatch County Subdivision

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This Amended and Restated Declaration is made as of the date of the recording in the Wasatch County Recorder's Office by the Big Pole Estates Homeowners Association, a Utah Nonprofit Corporation ("Association").

RECITALS

1. This Declaration supersedes and replaces in its entirety the previously recorded Declaration of Covenants, Conditions, Restrictions and Management Policies of Big Pole Estates that was recorded as Entry No. 00188418 on July 29, 1996 at the Wasatch County Recorder's Office, and all amendments thereto and prior versions thereof predating the recording of this Declaration ("Prior Declaration").
2. The Association is the authorized representative of the Owners of certain real property known as Big Pole Estates, located in Wasatch County, State of Utah and more particularly described on Exhibit A attached to and incorporated in this Declaration by reference.
3. Pursuant to Article VII, Section 3 of the Prior Declaration and Article XIII, Section 1 of the Prior Bylaws, this Declaration has been duly approved and adopted. A Certificate of Approval of the amendment is attached as Exhibit B and incorporated into this Declaration by reference.
4. The Association desires to establish, for its own benefit and for the mutual benefit of all current and future Owners and occupants of the Subdivision, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth in this Declaration.

SUBMISSION

1. The Property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Utah Community Association Act (the "Act").
2. The Property is made subject to, and shall be governed by the Act, this Declaration, and the covenants, conditions and restrictions set forth herein. The Property is also subject to the right of Wasatch County to access the roads within the Subdivision for emergency vehicles, service vehicles, and for all of the utility installations up to the residential meters.
3. The Property is subject to the easements and rights of way described herein and all easements of record. Easements and rights-of-way in favor of Wasatch County include any dedicated roadways and public utility easements that are depicted on the Plat, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

COVENANTS, CONDITIONS, AND RESTRICTIONS GENERALLY

In consideration of the Recitals above, the Association, in order to further preserve and maintain the integrity of the Subdivision, declares that the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions, and restrictions, which run with the Property and are binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

When used in this Declaration (including the “Recitals” and “Submission”), the following terms have the meaning indicated. Capitalized terms are defined in this Article. Terms that are applicable to a single section are defined in that section. Any term used in this Declaration which is defined by the Act, to the extent permitted by the context of this Declaration, has the meaning given by the Act. This Declaration incorporates all terms defined in the Act under Utah Code § 57-8a-102.

1.1 “Articles” and “Bylaws” shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board’s selection, the Board’s general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.

1.2 “Assessments” shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in this Declaration or the Bylaws, regardless of whether said assessment is identified as a regular assessment, special assessment, capital improvement assessment, individual assessment, reconstruction assessment, fine, or other charge.

1.3 “Association” shall mean the Big Pole Estates Homeowners Association, a Utah non-profit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.

1.4 “Association Rules” shall mean the rules adopted from time to time by the Association pursuant to ARTICLE 7 hereof.

1.5 “Board Member” means a member of the Board of Directors.

1.6 “Building” shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

1.7 “Board” shall mean the Board of Directors of the Association.

1.8 “Capital Improvement” shall mean all new improvements intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Subdivision, as opposed to ordinary repair and maintenance.

1.9 “County” shall mean Wasatch County, Utah..

1.10 “Common Areas” shall mean all real and personal property and other interests therein, together with the facilities, fixtures, and improvements located thereon, which the Association owns or otherwise holds and related improvements. Common areas shall include, without limitation, all easements running in favor of the Association and the improvements, fixtures situated within or upon said easements; all open space and trails owned or otherwise held by the Association; all Common Areas specifically set forth and designated as such on the Plat or Plats of the Property; and all Common Areas as defined in the Act, whether or not expressly listed herein or on the Plat or Plats of the Property.

1.11 “Common Expenses” shall mean the actual and estimated costs of any item or items approved by the Board and incurred, or anticipated to be incurred, in connection with the Common Areas, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration, including any reasonable reserve.

1.12 “Declarant” shall mean the Sacred Fountain of Youth Inc., which was the entity that developed the Property and no longer has any Declarant control over the Association.

1.13. “Design Guidelines” shall mean the guidelines adopted from time to time by the Board at its sole discretion, or by the Architectural Review Committee as provided for herein, setting forth certain architectural standards and specification regarding the location and design of the improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property.

1.14 “Governing Documents” shall mean a written instrument by which the Association may (a) exercise powers; or (b) manage, maintain, or otherwise affect the Property. Governing Documents includes the Articles, the Bylaws, any Plat, this Declaration, the Design Guidelines, and Association Rules.

1.15. “Hazardous Material” means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not airborne), which is deemed to be a pollutant or a contaminant or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other government restrictions or requirements, any amendments or successor(s) thereto, replacements thereof of publications promulgated pursuant thereto (collectively “Environmental Regulations” and individually, an “Environmental Regulation”); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term “Environmental Regulations” shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publication promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.16. “Improvements” shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, parking areas, fences, lighting, exterior painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.17. “Institutional Mortgagee” shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any insurance company, any federal or state agency, or any other institution specified by the Board.

1.18. “Lot” shall mean each or any individual lot as more particularly described in this Declaration, and any other lot or parcel shown on any Plat to the extent such lots or parcels are part of the Property. References in the Declaration to a specific Lot shall refer to the particular Lot as set forth in this Declaration and, as applicable, on the Plat for such Lot. In the case of parcels created only for the use of septic drainfields said lots shall not have a building right.

1.19 “Meeting of the Board” or “Meeting” shall mean a gathering of the Board, whether in person or by electronic system that allows for oral communication in real time (such as web conferencing, video conferencing, and telephone conferencing), at which the Board can take binding action; Communication by email shall not be considered a Meeting.

1.20 “Member” shall mean every individual or entity who qualifies for membership in the Association pursuant to ARTICLE 2.

1.21 “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.22 “Mortgagee” shall mean the mortgagee or beneficiary under any Mortgage. A “First Mortgagee” shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.23 “Occupant” shall mean the Owners, their respective heirs, successors and assigns (including Mortgagees), and any person who shall be from time to time entitled to the use and occupancy of space located within the Subdivision under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.24 “Owner” shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, and the purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.25 “Permittees” shall mean all Occupants and all other invitees of Occupants.

1.26 “Plat” shall mean any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots, Buildings, improvements, or Residences; (c) on which or in an instrument recorded in conjunction therewith is expressed the intent that the Buildings, improvements, or Residences created by the Plat shall comprise the Subdivision; and (d) which is filed for record in the office of the County Recorder of Wasatch. Recorded prior to this Declaration is a subdivision plat recorded in the Wasatch County Recorder’s Office on July 29, 1996 as Entry No. 00188417 and another recorded in the Wasatch County Recorder’s Office on December 27, 2018 as Entry No. 459330. Without limitation, said subdivision plats each constitutes a Plat.

1.27 “Subdivision” shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon

1.28 “Property” shall mean the real property described on Exhibit “A” attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration.

1.29 “Residence” shall mean and refer to any Residence situated upon a Lot which has its own principal access to the outside, is not located over or under another Residence, and is designed and intended for separate, independent residential use and occupancy. All pipes, wires, conduits, HVAC equipment, or other similar equipment or public utility lines or installation constituting part of a particular Residence or serving only that Residence shall be considered part of the Residence.

1.30 “Set Back” shall mean the distance from the property line of the Lot to the Building or improvement that is subject to the Set Back requirement provided in this Declaration, the Design Guidelines for the Subdivision, and in any recorded final subdivision Plat affecting the Subdivision or in the County’s applicable zoning ordinance.

1.31 “Single Family” shall mean a person living alone or any of the following groups living together as a single, nonprofit housekeeping unit, sharing common living, sleeping, sanitation, cooking, and eating facilities: a) Any number of people who are all related by blood, marriage, adoption, or court sanctioned guardianship; or b) No more than four (4) unrelated adults; or c) No more than two (2) unrelated adults and their minor children.

1.32 “Utah Community Association Act” or the “Act” shall refer to the applicable provisions of the Community Association Act described in Utah Code § 57-8a-101 et seq., as amended from time to time.

ARTICLE 2 MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall

also be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with the Declaration. Membership in the Association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; provided, however, that a Member's voting rights and privileges in the Common Areas may be regulated or suspended as provided in this Declaration, the Bylaws, or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association so that the name of the Member corresponds with the ownership of the Lot set forth in the Wasatch County Recorder's office.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, and Association Rules. The Association shall have one class of Members. Each Member shall be entitled to one (1) vote for each Lot such Member owns. When more than one person owns a portion of the interest in a Lot, each such person shall be a Member, but the vote for such Lot shall be exercised as they among themselves determine. Absent any other agreement among co-Owners of a single Lot, (i) a single co-Owner appearing at an Association meeting will be entitled to cast the one vote for the Lot, and (ii) if multiple co-Owners appear at an Association meeting, each co-Owner will have a pro rata fractional vote based upon the ownership interests of the co-Owners appearing at such meeting. In no event shall more than one vote be cast with respect to any single Lot. The Association shall not be required to recognize the vote or written consent of any co-Owner that is not authorized to vote based upon a written designation of all such co-Owners delivered to the Association.

2.4 Approval of Members. Unless a different percentage is otherwise provided for in this Declaration, the Articles, or the Bylaws, the vote of a majority of a quorum of the voting interest shall be required to approve any matter before the Members. Votes may be taken at a meeting held pursuant to the requirements set forth in the Bylaws, or by an action by written consent. Quorum requirements for meetings of the Members shall be set forth in the Bylaws.

ARTICLE 3 COVENANT FOR ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association all Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon provided, shall be a charge on the land and shall be a continuing lien upon the Lot against

which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due, and of each subsequent Owner other than a Mortgagee. Any subsequent Owner of a Lot shall be deemed to have notice of the Assessments, whether or not a lien has been recorded. No Owner may waive or otherwise escape liability for an Assessment by abandonment of the Lot.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Owners and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

3.3 Regular Assessments. The timing of payment of Regular Assessments shall be determined by the Board prior to the beginning of each fiscal year. The Board shall determine the amount of the Regular Assessment to be paid by each Owner each year based upon the budget adopted by the Board and presented to the Members pursuant to Utah Code § 57-8a-215 (2011). Written notice of the annual Regular Assessments shall be sent to every Owner; provided that failure to provide adequate notice does not relieve the Owner's obligation to pay the Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it may adopt a supplemental budget pursuant to Utah Code § 57-8a-215 (2011).

3.4 Special Assessments. In addition to the Regular Assessments authorized in Section 3.3, the Association may, at the Board's discretion, levy a Special Assessment from time to time to cover any unexpected expenses resulting from natural or catastrophic events, operating shortfalls, major repairs, additions, or Capital Improvements. Special Assessments may be levied against one or more individual Lots uniquely benefited by the Special Assessment or against all Lots. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines. The Board may, without a vote of the Members, approve Special Assessments up to and not exceeding Two Thousand Dollars (\$2000.00) in the aggregate per Lot per year; Additional Special Assessments require approval from a majority of the voting interest of the Association.

3.5 Rate of Assessment. All Lots shall be assessed at the same rate.

3.6 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates, such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.7 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein; all properties dedicated to and accepted by, or otherwise acquired by a public authority; and the Common Areas.

3.8 Individual Assessments. In addition to any other Assessments authorized herein, the Association also may levy an Individual Assessment against any owner individually and against such Owner's Lot to reimburse the Association for costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, together with attorney's fees, interest and other charges related thereto which Individual Assessment may be levied by the Association after notice to an Owner and an opportunity for a hearing.

3.9 Board Discretion to Reduce or Abate. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its sole discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

3.11 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas. After the Turnover Date, all amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association.

3.12 Reinvestment Fee (previously called Transfer Fee). Within thirty (30) days after the effective date of any transfer of legal title to a Lot, the new Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in an amount determined by the Board from time to time. However, notwithstanding the foregoing, the following are not subject to the above referenced reinvestment fee:

- a. an involuntary transfer;
- b. a transfer that results from a court order;
- c. a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes;
- d. a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or

e. the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.

ARTICLE 4 NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge may be levied in an amount determined by the Board and the Assessment shall earn interest from the delinquency date at the rate of fifteen percent (15%) per annum.

4.2 Enforcement Rights. The Association shall have the right to take any of the following actions against one or more Owners(s) after the delinquency date:

a. The Association may bring an action to recover a money judgment against the Owner for unpaid Assessments, interests, late fees, costs, and attorney's fees.

b. The Association may foreclose the Association's lien against the Lot for the unpaid Assessments, interest, late fees, costs, and attorney's fees pursuant to Utah Code § 57-8a-304.

c. Subject to Utah Code § 57-8a-310, the Association may require tenants of a Lot to make future lease or rent payments directly to the Association so long as Assessments remain unpaid for such Lot.

4.3 Other Remedies. The Association shall have all other rights and remedies available by applicable law, including the right to assess fines and suspend voting rights for any period during which any Assessment against an Owner's Lot remains unpaid.

4.4 Intent. No provision of this Article shall be interpreted so as to limit in any way the rights of the Association for collection of Assessments.

4.5 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

4.6 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

ARTICLE 5
COVENANTS, CONDITIONS, AND RESTRICTIONS

The general intent of this Article is that the Board will strictly enforce the provisions hereof. However, in any particular instance, if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances, strict enforcement is not warranted and if authorized by Utah Code § 57-8a-213, the Board may forego strict enforcement.

5.1 Permitted Use. No Lot shall be used except for single-family, residential purposes. All Buildings must comply with the Design Guidelines.

5.2 Nuisances Prohibited. No person shall create, maintain or permit a nuisance in, on or about the Subdivision. For purposes of this Section a “nuisance” includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole and absolute discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:

- a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- b. The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- c. The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- d. The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Subdivision;
- e. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- f. Actions or activities tending to cause discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- g. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- h. Too much noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

- i. Allowing a pet to make continuous barking, meowing, or other animal noises.

5.3 Right of Entry. The Association reserves the right to, but shall have no obligation to enter upon all Lots, blocks or parcels of land creating an unsightly appearance, and to charge the Owner of said Lot, block or parcel of land, the actual cost plus fifty (50%) percent for services performed in alleviating said unsightly appearance. Each Lot Owner shall maintain the entire Lot in a neat and clean condition at all times. In the event that any of the above changes made by the Association under this section shall be paid when due, all costs and expenses including, but not limited to, attorney's fees incurred by the Association to effectuate collection of said charges, shall be borne by the Lot Owner.

5.4 Construction Materials and Dimensions. All homes, garages, and outbuildings must be constructed of exterior walls of hardy-board or equivalent, wood, logs, stucco, stone, or brick, and all Residences must be a minimum of 2500 square feet of living space, if more than one story 1500 square feet of living space must be on the main level (exclusive of porches, patios, garages, carports and storage rooms). All building materials not listed above are subject to review and approval of the Architectural Review Committee.

5.5 Number and Nature of Residences. Not more than one Residence shall be placed on each Lot or parcel of land. A Lot or parcel of land may be occupied and used for a single-family dwelling and for no other use or purpose, except properly approved storage buildings and accessory buildings. However, notwithstanding anything to the contrary herein, the Association shall not restrict or prohibit any internal accessory dwelling units as defined by Utah Code § 17-27a-526 constructed within an Owner's Lot if it complies with all applicable land use ordinances, building codes, health codes, and fire codes. Buildings within the development shall conform to the following standards:

- a. All homes must be constructed with a concrete footing and concrete or ICS (insulated concrete construction) sidewalls that extend from the footing to an above-grade location where they intersect with the wood or steel framed walls of the structure or other wall materials approved by the Wasatch County Building Department.

- b. Each Lot Owner is to so design his landscaping so as not to concentrate runoff but rather spread runoff out to prevent erosion.

- c. Those Lot Owners that must cross common areas to reach drain field areas are required to obtain approval of their revegetation and erosion control plan from the Architectural Review Committee. If an Owner fails to complete the approved revegetation and erosion control plan approved by the Architectural Review Committee, then the Association shall complete the work and assess the Lot Owner. Any drain field within in the common area must be located at least 10 feet from the common area boundary.

- d. Easements for the installation and maintenance of utilities and drainage facilities are reserved, as shown on the Plat, over the rear, side and front of each Lot and across all common areas. If an Owner places any structure, planting, or other material within these easement areas, the Owner bears the risk of losing the same and shall pay the expenses

associated with any damage or interference with the installation and maintenance of utilities and drainage facilities caused by such placement. The easement areas of each Lot, and all improvements in it, shall be maintained continuously by the Owner of said Lot. The width of each easement described herein is five (5) feet unless otherwise specified on the Plat.

e. The Lot Owner shall install and maintain a septic tank in compliance with state law and local health ordinances. No well or septic tank may be constructed on any Lot in the tract without the prior written approval of the Wasatch County Health Department or other legal agency. All Residences must have complete sanitary facilities including among others, a lavatory, wash basin, tub or shower, kitchen sink, and must be connected to sewage outlets in conformity with state and County health requirements. All septic system designs submitted to the Board for approval must be prepared by and approved by a certified, licensed engineer.

5.6 Recreational Vehicles. Boats, motorhomes, trailers, campers, large trucks and commercial vehicles (herein "Such Vehicles") belonging to Owners shall be parked only within the Lot of the Owner concerned. If vehicles are visible from the street, they must be behind an enclosed structure located behind the front plane of the home. In no instance may Vehicles be parked in the front yard. In addition to the foregoing, Vehicles and their enclosures must be placed in accordance with all standards established by the Architectural Review Committee and County.

5.7 Vehicle Repairs. No motor vehicle of any kind shall be repaired, constructed or reconstructed in view from the street upon any Lot except these restrictions shall not apply to emergency repairs to vehicles.

5.8 Unsightly Articles. No unsightly articles shall be permitted, as determined by the Board, to remain on a Lot so as to be visible from the street.

5.9 Signs. No signs of any kind shall be displayed to the public view without the approval of the Architectural Review Committee except such signs as may be erected by the Association for permanent identification of the Subdivision and except such signs of customary and reasonable dimension as may be displayed on a Lot advertising a Lot or Residence for sale or lease. Display of any "for sale" or "for lease" sign more than two (2) feet by one and one-half (1 1/2) feet shall require the prior written approval of the Architectural Review Committee. A residential identification sign for a Lot is permitted but generally shall not exceed 9 square feet and is subject to review and approval by the Board or the ARC at its sole discretion.

5.10 Motor Vehicles. All automobiles, motorcycles, trail bikes, snowmobiles, three-wheel powered devices, two or four-wheel drive recreational type vehicles or other recreational vehicles are to be operated only on established streets and parking areas and are specifically prohibited from all other portions of the Common Areas and individual lots. The Board may, at any time, prohibit any Owner from operating a vehicle in the Subdivision if the Board determines, in its sole discretion, that said vehicle constitutes a nuisance. Bicycles with electric motors are exempted from this rule. Vehicles used by the Association members or volunteers during maintenance activities associated with the Big Pole Trails system are also exempted from this rule.

5.11 Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, Residences, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws rules, or regulations pertaining to the removal and/ or control or noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health. The Association may use Association funds for the control of Noxious weeds and submit the cost for such control as an Assessment to the Lot Owner. Rabbit brush may also be included in this rule if the excessive growth of such becomes a fire hazard or presents an unsightly appearance as determined by the Board and the immediately adjacent property owners.

5.12 Site Grading and Drainage. Special notice is made with regard to the raising or otherwise changing the height of grade on all Lots. Neither the Lot Owner nor any person or persons claiming under an Owner shall or will at any time raise or otherwise change the height of grade on any Lot, except as authorized by applicable local ordinances and approved by the Architectural Review Committee. No Owner may interfere with the established drainage pattern over any part of the Subdivision unless adequate provision is made for proper drainage and is approved in advance by the Architectural Review Committee.

5.13 Fireplaces. All wood or coal burning fireplaces inside or outside of the house are prohibited for new homes or modifications contemplated as of the date of this document. Only natural gas or propane fueled fireplaces are permitted.

5.14 Storage Tanks and Utility Lines. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located underground. Fuel tanks such as propane (other than those used exclusively for barbecues not exceeding 20 gallons) shall not be permitted on any Lot without the prior approval of the Architectural Review Committee. If approved, all propane tanks, or similar storage facilities shall be installed or constructed underground and in accordance with all laws and regulations or, or approval of the Architectural Review Committee, screened from public view.

5.15 Pets and Animals.

a. No livestock of any kind shall be raised, bred, or kept on any Lot or in the Common Areas of the Subdivision.

b. Poultry: Up to 5 chickens (no roosters) may be kept on any lot of the Subdivision but must be enclosed within a fence or coop behind the front line of the home. No free-range chickens are allowed.

c. No more than 4 domestic pets or service animals (cats or dogs only) may be kept or housed in Residences.

d. All animals must be kept on a leash or otherwise under control when in the common area. Animals that exhibit threatening behavior (barking, growling, lunging, etc.) to other common area users are prohibited from further use of the common area, whether on a leash

or not. The Board shall make the final determination as to the threatening nature of the animal's behavior. If an animal defecates on the Big Pole trail, the owner shall remove such waste from the trail.

e. Each Owner who keeps an animal on a Lot shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the subdivision.

f. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Association will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Association may revoke its permission to keep the pet in the subdivision and the pet shall be removed therefrom.

5.16 No Alterations. No Owner shall, without the prior written consent of the Association in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Common Areas or other Improvements thereon or thereto, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Subdivision. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Association shall consent thereto in writing.

Satellite Dishes and Antennas. The Association shall have authority to create and enforce Association Rules regulating the placement of satellite dishes, outdoor antennas, ground-mounted solar systems, wind power generators, and other similar appliances for the purpose of addressing legitimate safety concerns in a manner that is no more burdensome to the Owner than necessary. No satellite dishes, outdoor antennas, or other similar appliances shall be larger than one meter in width or shall extend higher than twelve (12) feet above the Owner's roofline unless expressly permitted by resolution of the Board.

5.17 Commercial Business. Commercial Business visible from outside the home shall not be permitted within the Subdivision. However, nothing in this article shall be construed to prevent the Association from entering into contracts with utility providers which contracts would involve installing and maintaining equipment within the Subdivision. Moreover, nothing in this article shall be construed to prevent an Owner from using his Lot for a home occupation pursuant to County ordinance.

5.18 Rules and Regulations. Each Owner shall comply strictly with all Association Rules and other regulations adopted by the Association for the governance of the Lots, the Common Areas, and the Subdivision, as such rules and regulation may be modified, amended, and construed by the Association. Each Owner shall be held responsible for the noncompliance of the same by its Permittees, guests, tenants, licensee, or invitees

5.19 Subdivision of Lots. A Lot may not be subdivided.

5.20 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which

would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or Hazardous Materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, or any other activity that creates sparks, any activity that may be considered hazardous, and setting open fires.

ARTICLE 6 GENERAL CONSTRUCTION REQUIREMENTS

6.1 Construction of Improvements on Each Lot. Any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the County, state and federal government, or any department or agency thereof and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with engineering standards. For improvements covered by the Architectural Control Committee Approval Process for Building Plans and Other Construction Projects, approval is required prior to submitting to the County for a building permit.

6.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

ARTICLE 7 DUTIES AND POWERS OF THE ASSOCIATION

7.1 Organization of the Association. The Association has been organized as a nonprofit corporation pursuant to the Utah Nonprofit Corporation Act. If, at any time, such nonprofit corporation is dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. To the greatest extent possible, the successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association. Notwithstanding the foregoing, upon dissolution of the nonprofit corporation, the Board, in its sole discretion, may re-incorporate the Association by renewing the dissolved nonprofit corporation or by incorporating a new nonprofit corporation with a name that is substantially similar to the previously dissolved nonprofit corporation and with Articles that adopt the Declaration and Bylaws and that are otherwise substantially similar to the Articles of the previously dissolved nonprofit corporation. In the event that the Board incorporates a new nonprofit corporation as described above, the new nonprofit corporation shall be a successor of the previously dissolved nonprofit corporation and all of the property, powers, and obligations of the nonprofit corporation existing immediately prior to its dissolution shall thereupon automatically vest in the new nonprofit

corporation.

7.2 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

a. enforce the provisions of the Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation for the Association Rules as provided in Section 7.2 below, which shall include the establishment of a system of fines or penalties enforceable as Individual Assessments;

b. acquire, maintain and otherwise manage all of the Common Areas and all improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain, including, without limitation, landscaped areas, trails, and parking areas, as provided in this Declaration or pursuant to agreement with the County or other governmental agency or authority;

c. pay any real and personal property taxes and other charges assessed against the Common Areas;

d. grant access easements over the Common Areas for the benefit of the Association.

e. contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

f. delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential planned unit developments to perform all or any part of the duties and responsibilities of the Association;

g. establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

h. have the power of entry upon any Lot where necessary in connection with construction, maintenance, repair, or enforcement for the benefit of the Common Areas, or the Owners;

7.3 Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; *provided, however,* that the Association Rules

may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available from the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

7.4 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws; *provided, however*, no such delegation, whether to a professional management company, committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

7.5 Schedule of Fines and Penalties. The Association has the authority, from time to time, to set forth in the Association Rules a schedule of fines and penalties for violations of the Association's governing documents.

ARTICLE 8 REPAIR AND MAINTENANCE

8.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Common Areas in such a manner and at such times as the Board shall prescribe and shall have a right of entry sufficient to allow accomplishment of the same:

a. maintain the Common Areas in a clean, safe, and attractive condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, and attractive condition at all times, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas;

b. repair, restore, replace and make necessary improvements to the Common Areas;

c. maintain all drainage facilities and easements which constitute Common Areas in accordance with the requirements of any applicable flood control district;

d. cause the appropriate public utility to maintain any utility easements located within the Common Areas;

e. maintain areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote of Members constituting a majority of a quorum.

f. each Owner shall reasonably minimize external lighting except that on decks, patios, and other such improvements and lighting needed for safety, ingress and egress to the lot. Except for security, motion-sensor lights, all exterior lighting shall have shading such that the lights are reflected downward.

g. Holiday lighting between November 15 and January 31 of each year shall be exempted from these requirements. The Board may approve any exceptions to these requirements.

8.2 Repair and Maintenance by Owner. Every Owner shall:

a. maintain all portions of such Owner's Lot, Residence, and all Improvements thereto including, without limitation, all exteriors, landscaping, and fences and walls appurtenant to his or her Lot, in a clean, safe, and attractive condition, and painted as required at all times and in compliance with this Declaration, the Articles, Bylaws and the Association Rules;

b. repair any structural or visible defects or damages to such Owner's Lot, Residence, and all Improvements thereto;

c. keep such Owner's Lot free from weeds, trash, and debris, and keep all lighting clean and functional.

8.3 Architectural Review Committee and Design Guidelines.

a. The Board may appoint an Architectural Review Committee ("ARC") and may establish provisions related to the ARC in the Association Rules. The ARC may consist entirely or in part of members of the Board. If the Board does not appoint an ARC, the Board shall serve as the ARC. The ARC shall prepare or adopt and promulgate on behalf of the Board design and development guidelines (the "Design Guidelines") and application and review procedures applicable to the Association Properties or any portion thereof. The Design guidelines and procedures shall be those of the Association and the ARC shall have the sole and full authority to prepare and to amend the same, subject to approval of the County (if applicable). Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Design Guidelines, the ARC or the Board shall hold a Meeting at which it provides the Members an opportunity to be heard. The ARC or the Board shall deliver to the Members notice of the Meeting and its purpose at least fifteen (15) days prior to the Meeting. The Association shall make copies of the guidelines and procedures available, upon request, to Owners, builders, and developers who seek to engage in development of or construction upon any portion of the Association Properties, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

b. Any construction, alteration, modification, removal or destruction, within the subdivision, including the location of all improvements, must be approved in writing by the ARC prior to the commencement of the same. No person commencing such construction, alteration, modification, removal or destruction prior to receipt of such written approval shall acquire any vested rights in any such improvement. A majority of the members of the ARC shall have the

power to act on behalf of the ARC, without the necessity of a Meeting. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto and such decisions must be rendered within 30 days of the application submitted. Any application deemed incomplete by the ARC shall not be considered for review. The 30-day clock will resume only at the time the application is considered complete. Notice of completeness shall be provided within 15 days following the date of receipt of the completed application.

c. The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or incompatible with the Design Guidelines. Considerations such as sitting, shape, size, color, design, height, materials, solar access or other effects on the enjoyment of other Lots or Common Area, and any other factors which the ARC reasonably believes to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

d. Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

e. Any Owner adversely impacted by action of the ARC may appeal such action to the Board. If, however, the ARC's duties are being carried out by the Board, then no such right to appeal shall exist.

f. All appeals and hearings shall be conducted in accordance with procedures set forth by the Board by resolution.

g. The ARC's approval of any proposal shall automatically be revoked within six (6) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

h. The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date. Any Owner who receives a notice of noncompliance may appeal the notice in accordance with the appeals procedure set forth by the Board.

i. Neither the Board nor the ARC shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

8.4 Standards for Maintenance and Construction.

a. Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines and this Declaration.

b. Throughout any period of construction upon a Lot, the Owner of such Lot shall keep the Lot and all streets used by construction equipment or trucks in a clean and safe condition, shall remove all trash, rubbish, debris, mud and dirt from roadways therefrom on a timely basis as deemed by the Board, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

8.5 Right of Association to Maintain and Install. In the event that the need for exterior maintenance or repair of a Residence or the Improvements thereto is caused through the willful or negligent acts of the Owner or the Owner's Occupants or Permittees, the cost of such exterior maintenance or repair shall be assessed against the Owner and his Lot as hereinafter set forth.

a. Upon finding by the Board that the need for exterior maintenance or repair was caused by the willful negligent acts of the Owner or the Owner's Occupants or Permittees, the Board shall give notice of its finding to the responsible Owner which shall briefly describe the maintenance or repair needed and the willful or negligent acts and set a date for hearing before the Board or a committee selected by the Board for such purpose.

b. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

c. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of a committee may be appealed to the Board, but a decision of the Board shall be final.

d. If, after a hearing as described herein, the Board reaches a decision that the need for exterior maintenance or repair was caused by the willful or negligent acts of the Owner, its Occupants or Permittees, and the Association pays for such maintenance or repair, such amount shall be an Individual Assessment to the affected Owner and Lot.

**ARTICLE 9
INSURANCE**

9.1 Insurance Obtained by the Association. The Association shall purchase and maintain all insurance required to be obtained by the Association under the Act, Declaration, and Bylaws, and any additional insurance the Board deems necessary.

9.2 Hazard Insurance. To the extent reasonably available, the Association shall maintain a blanket policy of property insurance covering the Common Areas against loss or damage.

9.3 Liability Insurance. The Association shall obtain comprehensive general liability (CGL) insurance insuring the Association, the agents and employees of the Association and the Owners, against liability incident to the use, ownership, or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

9.4 Directors and Officers Insurance. The Association shall obtain Directors' and Officers' (D&O) liability insurance protecting the Board of Directors, Architectural Review Committee, other committees, the officers, subordinate officers, and the Association against claims of, including without limitation, wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, etc.

9.5 Adjustments. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of the Act.

9.6 Insurance by Lot Owners. Each Owner is responsible for obtaining, at such Owner's expense, insurance against his or her liability and property insurance covering his/her Lot, dwelling, other related improvements, and personal property.

9.7 Waiver by Members. The Members hereby waive and release all claims against the Association, the Board, and agents and employees of the same, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only. However, if such a waiver by the Members would void any of the Association's insurance policies, this section does not apply to that policy.

9.8 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

ARTICLE 10 RIGHTS TO THE COMMON AREAS AND FACILITIES

10.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall

pass with the interest required to be an Owner to every Lot, subject to the following provisions:

- a. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas.
- b. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to the County, shall be effective unless approved by Members holding not less than fifty-one percent (51%) of the voting power of the Members.
- c. The right of the Association to establish, in cooperation with the County, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsections 12.1(b) above, all or any portion of the Common Areas to said district.

10.2 Waiver of Use. No member may exempt themselves from Assessment obligations nor release their Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas or the abandonment of their Lot.

10.3 Authority to Close. The Board shall be authorized to close the Common Area or specific parts of the Common Area to public use due to abuse or other activities deemed harmful to the Owners at the sole discretion of the Board of Directors.

ARTICLE 11 EASEMENTS

11.1 Owners' Rights and Duties: Utilities and Communication Lines. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, communication lines, cable television lines and drainage facilities shall be governed by the following:

- a. Wherever sanitary sewer, water, electricity, gas, telephone and communication lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement for the full extent necessary therefore, to enter upon the Lots owned by others, in or upon said lines or facilities, or any portion thereof, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

- b. Wherever sanitary sewer, water, electricity, gas, telephone or communication lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner of each Lot served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot.

c. The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

11.2 Utilities. Easements over the Property for the installations and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

11.3 Common Area Easements. Nonexclusive easements are hereby reserved and established for the benefit of each Owner and the Occupants and Permittees of each Owner.

ARTICLE 12 AMENDMENTS

12.1 Manner of Amending. This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of voting Members representing a simple majority of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

12.2 Consent to Amend. If an Owner consents to the Amendment of this Declaration or the Association bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

12.3 Acceptance of Deed. By acceptance of a deed of conveyance to a Lot or Residence, each Owner thereby gives its full, irrevocable, and unqualified consent on behalf of itself, its mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article.

ARTICLE 13 GENERAL PROVISIONS

13.1 Enforcement. Either the Association or any Owner shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations, and the right to recover damages for such violation; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Association Rules, and any amendments thereto. Failure by the Association, Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same

covenant, condition or restriction.

13.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

13.3 Severability. Notwithstanding invalidation of any one of these covenants, conditions or restrictions by judgment or court order, all other provisions hereof shall remain in full force and effect.

13.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, Occupants, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded; after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years.

13.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of residential units on the Property and for the maintenance of the Property and the Common Areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

13.6 Singular Includes Plural. Whenever the context of this Declaration requires, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

13.7 Nuisance Generally. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

13.8 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be an Individual Assessment with respect to the Lot involved in the action.

13.9 Notices. Any notice to be given to an Owner or Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

- a. Notice to an Owner shall be deemed to have been properly delivered when

delivered personally, sent by fax or email, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice sent by fax or email shall be deemed delivered the earlier of twenty-four (24) hours after being sent or confirmed receipt. Any notice deposited in the mail shall be deemed delivered the earlier of five (5) days after such deposit or upon confirmed receipt. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners, on behalf of all co-Owners, and shall be deemed delivered on all such co-Owners.

b. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

13.10 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. The Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

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

13.12 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, nor any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Association adopted this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Management Policies for and respecting Big Pole Estates Homeowners Association with the necessary approval of Lot owners as required herein, on the _____ day of _____, 2022.

BIG POLE ESTATES HOMEOWNERS ASSOCIATION

BY: _____

TITLE: _____

STATE OF UTAH)
) SS:
WASATCH COUNTY)

Subscribed and sworn before me this _____ day of _____, 2022.

Notary Public

**EXHIBIT A
LEGAL DESCRIPTION**

Legal Description: Big Pole Estates

(Remainder of Page Left Intentionally Blank – see following pages)

EXHIBIT B
Certificate of Approval of Amendment

The undersigned, being duly authorized Directors of the Big Pole Estates Homeowners Association, being duly sworn, certify as follows:

1. Attached to this Certification is the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR BIG POLE ESTATES, a Planned Unit Development situated in Wasatch County, State of Utah.
2. The Prior Declaration and other proceeding amendment(s) were properly amended by a majority of the Association's voting interest and, pursuant to Article VII, Section III of the Prior Declaration, this amending instrument was approved by the Wasatch County Board of County Commissioners.
3. The Association authorized the recording of the Amended and Restated Declaration with this Certificate.

Dated: _____, 2022

Big Pole Estates Homeowners Association

By: _____
Representative of the Board of Directors

Attest: _____
Co-member of the Board of Directors

STATE OF UTAH)
) ss
WASATCH COUNTY)

Subscribed and sworn before me this ____ day of _____, 2021.

NOTARY PUBLIC