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Rhonda Francis Summit County Recorder

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By SNELL & WILMER LLP

Electronically Recorded

WHEN RECORDED, PLEASE RETURN TO:

The Preserve Homeowners Association  
Attention: Patty Winterer  
1750 Sunpeak Drive, Suite 175  
Park City, Utah 84098

Affects Parcel Nos.: See Exhibit A

**FIRST AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE PRESERVE AT PARK CITY**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PRESERVE AT PARK CITY** (the "**First Amendment**") is made and executed as of the 30<sup>th</sup> day of Sept. 2019, by the undersigned being the duly authorized officer and trustee of the Board of Trustees (the "**Board**") for The Preserve Homeowners Association, a Utah nonprofit corporation (the "**Association**"), pursuant to the provisions of Title 57, Chapter 8a, Utah Code Annotated, as amended.

**RECITALS**

A. The Preserve Development Company, LLC, a Utah limited liability company, predecessor-in-interest to FCOI Preserve LLC, a Delaware limited liability company, submitted that certain real property in Summit County, Utah, to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Preserve at Park City dated March 2008 (the "**Declaration**"), recorded as Entry No. 00840887 on March 28, 2008 in the Summit County Recorder's Office;

B. The real property described in the attached Exhibit A has been submitted to the Declaration; and

C. This Amendment has been approved by the required affirmative vote of Owners in accordance with Section 5.2 of the Declaration, as affected by Utah Code Ann. § 57-8a-104(1).

**WITNESSETH**

**NOW, THEREFORE**, the Declaration is hereby amended as follows, with such amendment to become effective upon the recording of this First Amendment in the Summit County Recorder's Office, State of Utah:

1. Incorporation/Interpretation. The Recitals above shall form a substantive part of this First Amendment. The terms of the Declaration are hereby incorporated into this First Amendment, except as revised below. In the event of a conflict between the terms of this First

Amendment and the terms of the Declaration, the terms of this First Amendment shall control. Capitalized terms used in this First Amendment and not defined in this First Amendment shall have the meanings given to such terms in the Declaration.

2. Amendment of Section 3.8. Section 3.8 of Article III of the Declaration is amended by deleting the existing Section 3.8 and replacing it with the following:

3.8 Timing of Dwelling Construction. Upon purchase of a Lot, an Owner is not required to begin construction of a Dwelling by a set time; however, the primary residence or Dwelling on a Lot must be completed concurrent with or prior to the completion of a Guesthouse the same Lot.

3. Amendment of Section 3.9. Section 3.9 of Article III of the Declaration is amended as follows. The words "Habitable Space is defined as all areas within the exterior wall foot print and excludes garage space and mechanical areas" shall be deleted from Section 3.9 of Article III and replaced with the following: "**Habitable Space** is defined as the areas measured from the interior surface of the exterior walls, including any areas that can be converted to livable space, excluding garages, garage space, and mechanical areas"

4. Amendment of Section 3.11. Section 3.11 of Article III of the Declaration is amended by deleting the existing Section 3.11 and replacing it with the following:

3.11 Chimneys, Vents and Roof Penetrations. Chimneys, vent stacks, and roof penetrations are to be installed or completed in compliance with the Design Guidelines.

5. Amendment of Section 3.13. Section 3.13 of Article III of the Declaration is amended by deleting the existing Section 3.13 and replacing it with the following:

3.13 Solar Panels and Windmills. Solar panels and wind applications will be considered on a case by case basis by the Committee, in accordance with the Act and with particular attention to visibility and noise.

6. Amendment of Section 4.12. Section 4.12 of Article IV of the Declaration is amended as follows. The words "in escrow" shall be deleted from Section 4.12 of Article IV.

7. Amendment of Section 5.2. Section 5.2 of Article V of the Declaration is amended by deleting the existing Section 5.2 and replacing it with the following:

5.2 Amendment. Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing, and by the affirmative vote or written consent, or any combination thereof, of Owners which in the aggregate represent voting interests totaling not less than sixty-seven percent (67%) of the total Owners voting interests in the Association. Any one Owner of a Lot's approval is sufficient if there are multiple Owners of the Lot. This Master Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Utah Community Association Act codified beginning at

§57-8a-101, Utah Code Annotated (as amended, the "Act"), applicable to the Association, including a section that would not otherwise be applicable to the Association. An amendment that has been adopted as provided in this Section 5.2 shall be executed by the President and the Secretary of the Association shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded with the Summit County Recorder.

8. Addition of Section 5.10. The Declaration is hereby amended to add the following as Section 5.10 in Article V of the Declaration:

5.10 Changes to Plat or Boundaries of the Association. "Plat" means, individually or collectively, as the context may require, the subdivision plats affecting or for The Preserve, The Preserve Phase 1, The Preserve Phase 2, The Preserve Phase 2A, or The Preserve Phase 3, and any portions thereof, as recorded in the Summit County Recorder's Office, State of Utah, and all recorded amendments and supplements thereto. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around The Preserve, including any boundary to any Lot or Lots upon the approval by vote or written consent, or any combination thereof, of sixty-seven percent (67%) of Owners. Any one Owner of a Lot's approval is sufficient if there are multiple Owners of the Lot. Any such Plat may make material changes to the existing or prior Plat, including deleting, adding to, or modifying Association property or common areas, or other changes in the layout of The Preserve. If any such amendment affects any boundary of a Lot, that Lot Owner must consent. If the approval required herein is obtained, each Owner: (a) shall sign, consent to, and execute, and shall, if requested by the Association, obtain the consent of lien holders against such Owner's Lot to, any further documents required for the finalization, recording, or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; (b) grants to the Association power-of-attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction; and (c) shall be deemed to have consented to (i) any changes to the proposed Plat amendments required by Summit County or any other entity whose approval is required for the Plat amendments, and (ii) any changes to the proposed Plat amendments deemed necessary, appropriate, or advisable by the Association's Board, in consultation with legal counsel, to accomplish the purposes of such approved Plat amendments. No such amendment to the Plat shall require the consent or approval of any lien holders holding security interests secured by a mortgage or trust deed against any Lot, except that the consent of lien holder(s) holding security interests secured by a mortgage or trust deed recorded against the Common Areas of the Association shall be required.

9. Ratification. The Declaration, as amended herein, shall remain in full force and effect.

10. Certification. Pursuant to Section 5.2 of the Declaration, as affected by Utah Code Ann. § 57-8a-104(1), the Board, by its authorized officer's signature below, hereby

certifies that the vote required to amend the Declaration has occurred and that this First Amendment was approved by said vote.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this First Amendment as of the day and year first-above written.

**Association:**

**The Preserve Homeowners Association, a Utah nonprofit corporation**

By: William Waller  
Name: William Waller  
Its: Authorized Officer and Trustee

STATE OF Utah  
COUNTY OF Davis

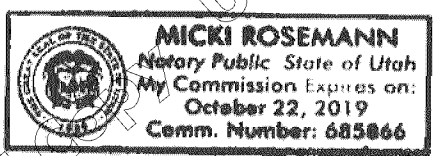
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ss.

On this, the 30<sup>th</sup> day of September, 2019, before me, the undersigned officer, personally appeared William Waller, a member of the Board of Trustees and Authorized Officer of The Preserve Homeowners Association, a Utah nonprofit corporation, and that he, being authorized to do so, executed the foregoing instrument for the purpose therein contained and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Micki Rosemann  
Notary Public

[Seal]



**EXHIBIT A**  
**TO FIRST AMENDMENT TO**  
**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND**  
**RESTRICTIONS FOR THE PRESERVE AT PARK CITY**

That certain real property located in Summit County, Utah, and more particularly described as follows:

## EXHIBIT A

**1- LOTS 1 through 10 and 15 through 20 and Open Spaces of THE PRESERVE** as shown within The Preserve Phase I Plat recorded on December 17<sup>th</sup>, 2003 in Summit County, Utah as further described here:

PRESRV-1-1	PRESRV-1-5	PRESRV-1-9	PRESRV-1-17
PRESRV-1-2	PRESRV-1-6	PRESRV-1-10	PRESRV-1-18
PRESRV-1-3	PRESRV-1-7	PRESRV-1-15	PRESRV-1-19
PRESRV-1-4	PRESRV-1-8	PRESRV-1-16	PRESRV-1-20

PRESRV-1-OS-1	PRESRV-1-OS-2	PRESRV-1-OS-3	PRESRV-1-OS-4
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**2- LOTS 21 through 28 and 33 through 45 and Open Spaces of THE PRESERVE** as shown within The Preserve Phase II Plat recorded on December 7<sup>th</sup>, 2004 in Summit County, Utah as further described here:

PRESRV-2-21	PRESRV-2-27	PRESRV-2-36	PRESRV-2-41
PRESRV-2-22	PRESRV-2-28	PRESRV-2-37	PRESRV-2-42
PRESRV-2-23	PRESRV-2-33	PRESRV-2-38	PRESRV-2-43-1AM
PRESRV-2-24	PRESRV-2-34	PRESRV-2-39	PRESRV-2-44
PRESRV-2-25	PRESRV-2-35	PRESRV-2-40	PRESRV-2-45
PRESRV-2-26			PRESRV-2-AOS-1

**3- LOTS 29 through 32 and 88 of THE PRESERVE** as shown within The Preserve Phase II A Plat Recorded on October 31st, 2014 in Summit County, Utah as further described here:

PRESRV-2A-29	PRESRV-2A-30	PRESRV-2A-31	PRESRV-2A-32	PRESRV-2A-88
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**4- LOTS 51 through 87 and Opens Spaces of THE PRESERVE** as shown within The Preserve Phase III Plat recorded on August 8<sup>th</sup>, 2007 in Summit County, Utah as further described here:

PRESRV-3-51	PRESRV-3-61	PRESRV-3-71	PRESRV-3-81
PRESRV-3-52	PRESRV-3-62	PRESRV-3-72	PRESRV-3-82
PRESRV-3-53	PRESRV-3-63	PRESRV-3-73	PRESRV-3-83
PRESRV-3-54	PRESRV-3-64	PRESRV-3-74	PRESRV-3-84
PRESRV-3-55	PRESRV-3-65	PRESRV-3-75	PRESRV-3-85-AM
PRESRV-3-56	PRESRV-3-66	PRESRV-3-76	PRESRV-3-86-AM
PRESRV-3-57	PRESRV-3-67-AM	PRESRV-3-77	PRESRV-3-87-AM
PRESRV-3-58	PRESRV-3-68-AM	PRESRV-3-78	PRESRV-3-OS-1

PRESRV-3-59	PRESRV-3-69	PRESRV-3-79	PRESRV-3-OS-2
PRESRV-3-60	PRESRV-3-70	PRESRV-3-80	PRESRV-3-OS-3

5- Parcels SS-13-1, SS-13-2, SS-13-2-A, and SS-13-3, SS-152-9

**SS-13-1:**

Beginning at a point East 981 feet from the Northwest Corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence East 326 feet along the section line; thence South 1000 feet; thence West 326 feet; thence North 1000 feet to the point of beginning.

Together with the right-of-way at least 50 feet in width over the Milton O. Bitner property conveyed by Craig L. Anderson and subject to all the rights of ways for existing roadways.

**SS-13-2:**

BEGINNING AT A POINT WHICH IS EAST 1307 FEET FROM THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE EAST ALONG THE SECTION LINE 435 FEET; THENCE SOUTH 1000 FEET; THENCE WEST 435 FEET; THENCE NORTH 1000 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH A RIGHT OF WAY AT LEAST 50 FEET IN WIDTH OVER THE MILTON O. BITNER PROPERTY AS CONVEYED BY PRIOR DEED.

**SS-13-2-A:**

BEG E 1742 FT FR NW COR SEC 5 T1 S R 4 E SLB M, TH E ALG SEC LINE 435 FT, TH S 1000 FT, TH W 435 FT, TH N 1000 FT TO BG CONT 10.0 ACRE (DIVISIN LINE TO RUN THRU 1/2 POND) (BEING PAT LOTS 55, 56 & 56A SUBJET TO EASEMENTS & R/W) M64-169 M93-417 2139-541

**SS-13-3:**

Beginning at a point East 2177 feet from the Northwest Corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence East 423 feet along the section line; thence South 1029 feet; thence West 423 feet; thence North 1029 feet to the point of beginning.

Subject to easements, restrictions and rights of way currently of record and general property taxes for the year 2017 and thereafter.

**SS-152-9:**

Commencing at the Southwest corner of Section 32, Township 1 North, Range 4 East, SLB&M, and running thence North 225 feet; thence East 200 feet; thence South 225 feet; thence West 200 feet to point of beginning.