

WHEN RECORDED, PLEASE RETURN TO:

The Preserve Homeowners Association
c/o Sea to Ski Property Management
2100 Park Avenue
P.O. Box 682182
Park City, UT 84068

01202732 B: 2777 P: 0052

Page 1 of 10

Rhonda Francis Summit County Recorder

04/07/2023 08:44:25 AM Fee \$202.00

By SNELL & WILMER LLP

Electronically Recorded

Affects Parcel Nos.: See Exhibit A

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

THIS SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PRESERVE AT PARK CITY (the “**Second Amendment**”) is made and executed as of the ___ day of March 28, 2023, 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, recorded as Entry No. 00840887 on March 28, 2008 in the Summit County Recorder’s Office, as amended by that certain First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Preserve at Park City dated September 30, 2019, and recorded as Entry No. 01118945 on October 1, 2019 in the Summit County Recorder’s Office (as amended, the “**Declaration**”);

B. A Notice of Reinvestment Fee dated August 8, 2011 (the “**Notice**”), was recorded as Entry No. 00927816 on August 10, 2011 in the Summit County Recorder’s Office in relation to the Lot Transfer Fee referenced in the Declaration;

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

D. 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).

W I T N E S S E T H

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

1. Incorporation/Interpretation. The Recitals above shall form a substantive part of this Second Amendment. The terms of the Declaration are hereby incorporated into this Second Amendment, except as revised below. In the event of a conflict between the terms of this Second Amendment and the terms of the Declaration, the terms of this Second Amendment shall control. Capitalized terms used in this Second Amendment and not defined in this Second Amendment shall have the meanings given to such terms in the Declaration.

2. Amendment of Section 1.10. Section 1.10 of Article I of the Declaration is amended by deleting the existing Section 1.10 and replacing it with the following:

1.10 Reinvestment Fee Covenant. Upon the occurrence of a Transfer, as defined below, the Transferee under such Transfer shall pay to the Association for the benefit of the Association a reinvestment fee (the "Reinvestment Fee") equal to the Fair Market Value, as defined below, of the Lot subject to a Transfer, multiplied by the Reinvestment Fee assessment rate established by the Board. The Reinvestment Fee assessment rate shall initially be three-quarters of one percent (0.75%) and may, with the approval by vote or written consent, or any combination thereof, of a majority vote of Owners where at least one-half (1/2) of the total Owners voting interest in the Association cast votes on the matter, be increased to an amount which shall not exceed the greater of (i) one percent (1.00%) and (ii) the maximum rate permitted by law. Each Transferee shall be obligated to pay and shall pay to the Association the Reinvestment Fee levied with respect to the applicable Lot and each such Transferee shall comply with any determinations made by the Board with respect to such fees.

(a) **Definitions**. As used in this Section 1.10, the following terms shall have following meanings:

"Transfer" means, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease, or other transfer of beneficial ownership of any Lot, including but not limited to: (1) the conveyance of fee simple title to any Lot, (2) the transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Lots, and (3) the transfer of more than fifty percent (50%) of the interest in net profits or net losses of any partnership, joint venture, limited liability company, or other entity which, directly or indirectly, owns one or more Lots; but "Transfer" shall not mean or include the Transfers excluded under subparagraph 1.10(b) below.

"Transferee" means all parties to whom any interest passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee under this section.

“Fair Market Value” of a Lot subjected to Transfer means, in the case of a Transfer that is in all respects a bona fide sale, the consideration, as such term is defined below, given for the Transfer. In case of a Transfer that is a lease or is otherwise not in all respects a bona fide sale, Fair Market Value of the Lot subjected to Transfer shall be determined by the Association. A Transferee may make written objection to the Association's determination within 15 days after the Association has given notice of such determination, in which event the Association shall obtain an appraisal, at the Transferee's sole expense, from a MAI real estate appraiser of good reputation, who is qualified to perform appraisals in Utah, who is familiar with Summit County and Park City area real estate values, and who shall be selected by the Association. The appraisal so obtained shall be binding on both the Association and the Transferee. Notwithstanding above provisions to the contrary, where a Transferee does not object within 15 days after the time required by this section for objecting, the Transferee shall be deemed to have waived all right of objection concerning Fair Market Value, and the Association's determination of such value shall be binding.

“Consideration” means the total of money paid and the Fair Market Value of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Lot, and includes the amount of any note, contract indebtedness, or rental payment reserved in connection with such Transfer, whether or not secured by any lien, deed of trust, or other encumbrance, given to secure the transfer price, or any part thereof, or remaining unpaid on the property at the time of Transfer, whether or not assumed by the Transferee. The term “consideration” does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Utah, or a municipal or quasi-municipal governmental corporation or district.

(b) **Exclusions.** The Reinvestment Fee shall not apply to, and the Association shall not levy or collect a Reinvestment Fee for, any of the following, except to the extent that they are used for the purpose of avoiding the Reinvestment Fee:

- (i) Any Transfer exempted by Utah Code § 57-1-46 (as amended).
- (ii) Any Transfer to secure a debt or other obligation or to release property that is security for a debt or other obligation, including transfers in connection with foreclosure or a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure.
- (iii) Any Transfer to the Association.

(c) All Reinvestment Fees to be levied shall be levied at the time of a Transfer and shall be payable within thirty (30) days after being levied, and each Reinvestment Fee not paid within thirty (30) days of the levy date (the “Levy Date”), which is the date of mailing of notice of the Reinvestment Fee, shall accrue interest from the Levy Date until fully paid at rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board; such interest shall be payable on demand computed monthly, and if unpaid, compounded monthly, not in advance, at the rate so calculated as

of thirty (30) days after the Levy Date, and all accruing interest shall become a part of the assessment due and owing to the Association.

(d) The Association shall use the proceeds of the Reinvestment Fees for the benefit of the Property and the Lots, and all improvements related to the Common Areas, and including, without limitation, all uses permitted under Utah law.

3. Notice of Reinvestment Fee. The Notice shall be amended and restated, and recorded in the Summit County Recorder's Office concurrently with this Second Amendment, in order to reference and give notice of the Reinvestment Fee as set forth in this Second Amendment

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

5. 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 Second Amendment was approved by said vote.

[Remainder of Page Intentionally Blank; Signature Page Follows]

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

Association:

The Preserve Homeowners Association, a Utah nonprofit corporation

03/29/2023

See the Attached CA.

Acknowledgment or

Jurat Form

J.B. Swan III, Notary Public

By: 

Name: Deborah Lake

Its: Authorized Officer and Trustee

STATE OF _____)
) ss.
COUNTY OF _____)

On this, the ____ day of _____, 2023, before me, the undersigned officer, personally appeared Deborah Lake, 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.

Notary Public

[Seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

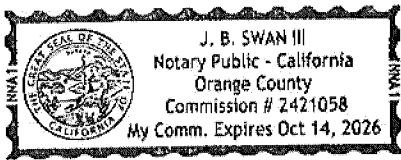
ACKNOWLEDGMENT


State of CALIFORNIA
County of ORANGE

On March 29, 2023 before me, J.B. Swan III, Notary Public,
(insert name and title of the officer) personally appeared Deborah Lake, who 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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

Number of Pages: 5

Type of Documents: **Second Amendment to Amended and Restated Declaration of Covenants...**

Document Date: **March 29, 2023**

EXHIBIT A
TO SECOND 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 2, 4 through 10, and 15 through 20 and Open Spaces of THE PRESERVE as shown within The Preserve Phase I Plat recorded on December 17th, 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-1-7	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- LOT 3 of THE PRESERVE as shown within The Preserve Phase 1 Lot 3 Amended Plat recorded on April 5th, 2022 in Summit County, Utah as further described here:

PRESRV-1-3-AM

3- LOTS 21 through 26, 28, 33 through 42, 44, and 45 and Open Spaces of THE PRESERVE as shown within The Preserve Phase 2 Plat recorded on December 7th, 2004 in Summit County, Utah as further described here:

PRESRV-2-21	PRESRV-2-26	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-2-44
PRESRV-2-24	PRESRV-2-34	PRESRV-2-39	PRESRV-2-45
PRESRV-2-25	PRESRV-2-35	PRESRV-2-40	PRESRV-2-AOS-1

4- LOT 27 of THE PRESERVE as shown within The Preserve, Phase 2, Amendment to Lot 27 Plat recorded on July 1st, 2019 in Summit County, Utah as further described here:

PRESRV-2-27-AM

5- LOT 43 of THE PRESERVE as shown within The Preserve Phase 2 First Amendment to Lot 43 Plat recorded on December 5th, 2006 in Summit County, Utah as further described here:

PRESRV-2-43-1AM

6- LOTS 29 through 32 and 88 of THE PRESERVE as shown within The Preserve Phase 2A 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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7- LOTS 51 through 66 and 69 through 84 and Open Spaces of THE PRESERVE as shown within The Preserve Phase 3 Subdivision Plat recorded on August 8th, 2007 in Summit County, Utah as further described here:

PRESRV-3-51	PRESRV-3-60	PRESRV-3-71	PRESRV-3-80
PRESRV-3-52	PRESRV-3-61	PRESRV-3-72	PRESRV-3-81
PRESRV-3-53	PRESRV-3-62	PRESRV-3-73	PRESRV-3-82
PRESRV-3-54	PRESRV-3-63	PRESRV-3-74	PRESRV-3-83
PRESRV-3-55	PRESRV-3-64	PRESRV-3-75	PRESRV-3-84
PRESRV-3-56	PRESRV-3-65	PRESRV-3-76	PRESRV-3-OS-1
PRESRV-3-57	PRESRV-3-66	PRESRV-3-77	PRESRV-3-OS-2
PRESRV-3-58	PRESRV-3-69	PRESRV-3-78	PRESRV-3-OS-3
PRESRV-3-59	PRESRV-3-70	PRESRV-3-79	

8- LOTS 67 and 68 of THE PRESERVE as shown within The Preserve Phase 3 Subdivision Amending Lots 67 & 68 Plat recorded on December 7th, 2018 in Summit County, Utah as further described here:

PRESRV-3-67-AM	PRESRV-3-68-AM
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9- LOTS 85 through 87 of THE PRESERVE as shown within the Preserve Phase 3 Amended Lots 85-86-87 Plat recorded on March 31st, 2016 in Summit County, Utah as further described here:

PRESRV-3-85-AM	PRESRV-3-86-AM	PRESRV-3-87-AM
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10- Parcels SS-13-1, SS-13-2, 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-13-3:

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.