

When recorded, mail to:

Justin Peterson
225 South 200 East, Suite 200
Salt Lake City, Utah 84111

13370685
08/24/2020 01:11 PM \$40.00
Book - 11004 Pg - 5502-5529
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
JUSTIN PETERSON
225 SOUTH 200 EAST
STE 200
SALT LAKE CITY UTAH 84111
BY: JLA, DEPUTY - WI 28 P.

Parcel Id No.:20362780280000

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS

FOR

PETERSON COMMONS, PHASE 2

A PLANNED RESIDENTIAL DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS (the "Declaration") is made on this 19th day of August, 2020, by MVIII LLC, a Utah limited liability company ("Declarant"), with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in Salt Lake County, State of Utah, which property is more particularly described as follows:

See attached Exhibit "A"

For purposes of development and marketing, the above-described property is intended to be known as "PETERSON COMMONS". In this Declaration, the term "Property" shall refer to Property set forth on Exhibit "A" consisting of 12 Lots, Parcel A and Parcel B (referred to individually as the "Lot" or collectively as the "Lots") and Common Area.

B. Declarant intends to improve the Property by construction thereon of certain utilities and common facilities, to be managed, operated, and maintained by an incorporated Association of Owners, for the benefit of the Property as a whole.

C. The development of the Property shall be hereinafter referred to as the "Project". The Owner of each of the Lots shall receive fee title to their individual Lot and the residential dwelling thereon, together with all rights associated with membership in the PETERSON COMMONS HOME OWNERS ASSOCIATION, INC. (the "Association").

D. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots and the Owners thereof.

E. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

Article I.
DEFINITIONS

Section 1.01 Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, shall have the following meanings:

- (a) **Articles:** the Articles of Incorporation of the Association, as amended from time to time.
- (b) **Assessment:** that portion of the cost of maintaining, improving, repairing, operating, and managing the Common Areas which is to be paid by the Lot Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.
- (c) **Association:** PETERSON COMMONS HOME OWNERS ASSOCIATION, INC., a Utah corporation, formed or to be formed by Declarant, the members of which shall be the Owners of Lots in the Project.
- (d) **Board or Board of Directors:** the governing body of the Association.
- (e) **Bylaws:** the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Directors.
- (f) **Common Areas:** shall mean and refer to:
 - i. All real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners and related improvements, including, but not necessarily limited to Parcels A and B as shown on the plat for Peterson Commons Phase 2, recorded January 7, 2020 as Entry Number 13164326, Book 2020, at Page 005 in the Office of the Salt Lake County Recorder (the "Plat"), a copy of which is attached hereto and incorporated herein as Exhibit "B";
 - ii. The sanitary sewer line and all laterals therefrom, except for the portion

located on the Owner's Lot, as indicated on Exhibit "C", attached hereto and incorporated herein.

- (iii) All Common Areas and Facilities specifically set forth and designated as such on the Plat or Plats of the Property.
- (iv) The fences that border the perimeter of a Lot is specifically excluded from the definition of Common Area and shall be maintained by the Owner of the adjacent Lots and not the Association.

(g) **Common Expenses:** the actual and estimated expenses of maintenance improvement, repair, operation, insurance, and management of the Common Area, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefitting the Common Area; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Common Area and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

(h) **Common Facilities:** Shall mean:

- (i) All real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time; and
- (ii) All property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street fixtures. The Common Facilities designated in the final subdivision Plat recorded by Declarant with regard to the Property shall be deemed conveyed by Declarant to the Association concurrently with the recording thereof. Unless otherwise stated in writing, the conveyance of Common Facilities from the Declarant to the Association shall be deemed a conveyance free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the

covenants, conditions, reservations, restrictions and easements contained in this Declaration.

- (i) **Declarant:** MVIII LLC a Utah limited liability company and its successors-in-interest and assigns with respect to the Property, but shall not include members of the public purchasing completed Units.
- (j) **Declaration:** this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements, as it may be amended from time to time.
- (k) **Dwelling:** that portion of any building (including garage and other improvements) which is located on a single Lot and which is designed and intended for use and occupancy as a single-family residence.
- (l) **Improvements:** the improvements included in the Project that now or will be located upon the Property. The location and configuration of the improvements referred to in the forgoing sentence are depicted on the Plat.
- (m) **Lot:** shall mean each or any individual lot as more particularly described in this Declaration, and any other lot, pad or parcel shown on any Plat to the extent such lots, pads or parcels are part of the Property, and any Improvements thereon other than Common Areas. Each Dwelling is deemed to be built on an individual Lot.
- (n) **Member:** a person entitled to membership in the Association as provided herein.
- (o) **Mortgage:** includes a recorded mortgagee, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.
- (p) **Mortgagee:** includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Unit.
- (q) **Mortgagor:** includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.
- (r) **Owner or Owners:** the record holder or holders or entity title to or a contract vendee's interest in a Lot in the Project. This shall include any person having a fee simple title to any Lot, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner", and the fee owner shall be considered a mortgagee.
- (s) **Person:** any natural person, corporation, partnership, association, trustee, or other legal entity.
- (t) **Plat or Plat Map:** the recorded map or maps prepared by or for Declarant showing the

surface of the Property and the division thereof into Lots and Common Area, as amended and/or supplemented from time to time.

- (u) **Project Documents:** this Declaration, the Plat Map, the Articles and the Bylaws of the Association, as each may be amended from time to time.
- (v) **Property or Project** (synonymous): the real property covered by this Declaration and all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon.
- (w) **Unit:** all elements of individual ownership of a residential interest in the Project, including ownership of a Lot and the Dwelling thereon, a nonexclusive easement and right of use and enjoyment of the remainder of the Common Area, and all rights of membership in the Association.

Article II.

ASSOCIATION, ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS

Section 2.01 Organization of Association. The Association is or shall be incorporated under the name of PETERSON COMMONS HOME OWNERS ASSOCIATION, INC., in accordance with the requirements of the Utah law.

Section 2.02 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

Section 2.03 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of that Lot, become a Member of the Association, and shall remain a Member thereof until such time their ownership of a Lot ceases for any reason, at which time their membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

Section 2.04 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of their Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 2.05 Class of Membership, Voting Requirements. The Association shall initially have two (2) different classes of voting membership; Class A Members and Class B Members, as described herein and according to the Articles and Bylaws for the Association. As provided herein and such additional governing documents for the Association, reasonable allowance shall be made for a transition from initial total ownership and control by the Declarant to eventual ownership and control by the individual property owners and residents within the Project. The different classes of voting membership shall be a mechanism to accomplish that objective and such other purposes as may be recognized and established under the Governing Documents of the Association.

Section 2.06 Class A Members. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

- (a) One Vote. Each Unit shall have one (1) vote.
 - (i) Multiple Owners. When more than one (1) Person holds an interest in a Lot, the Lot shall still have only one vote and the Persons shall advise the Secretary of the Association prior to any meeting which Person is entitled to cast the vote. In the absence of such notice, the vote of the Lot shall be suspended in the event more than one (1) Person or entity seeks to exercise it.
 - (ii) Leased Lot. Any Owner of a Lot which has been leased or rented may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

Section 2.07 Class B Members. The Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. Prior to the Transition Events, as defined below, the Declarant shall have the exclusive right to appoint all members of the Board. The Class B Members shall originally be entitled to three (3) votes per Lot owned or to be developed. The Class B membership shall terminate, and shall convert to Class A membership upon the happening of the earlier of the following (the “**Transition Events**”):

- (a) Lots Sold. One Hundred Twenty (120) days after the sale (meaning the execution and delivery of a deed to a Lot by Declarant to a person other than Declarant) of seventy-five percent (75%) of the Lots in the Project; or
- (b) Three Years. Three (3) years from the date following the first conveyance of a Lot to a Lot purchaser after effective date of this Declaration; or
- (c) Election. When, in its sole discretion, Declarant so determines.

Section 2.08 Change to Class A Member. From and after the happening of the Transition Events the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner

described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

Section 2.09 Membership Meeting. Regular and special meetings of Members of the Association shall be held with the frequency, and time and place, as are accordance with the provisions of the Bylaws of the Association.

Section 2.10 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association. Prior to the Transition Events, as defined in Section 2.07 above, the Declarant shall have the exclusive right to appoint all members of the Board of Directors.

Section 2.11 Use Of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of any such contract shall comply with the restrictions set forth in the Bylaws.

Article III. RIGHTS IN COMMON AREA

Section 3.01 Common Area. The Common Area shall include Parcel A and B as shown on the Plat, a copy of which is attached hereto and incorporated herein as Exhibit "B", including, but not necessarily limited to, all landscaped areas, fencing, and walkways within Parcel A and B, all of which shall be managed by the Association for the common benefit of all Owners. In addition, the Common Area shall include the sanitary sewer lines as shown on Exhibit "C". The Common Area shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Lots in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Lot Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Lot Owners. The Declarant hereby reserves in itself and its successors-in-interest and assigns, all easements (and the right to grant further easements) over and onto the Common Area for ingress to and egress from the Project for the purpose of necessary construction, maintenance, or repair work in connection with the development, use, and occupancy thereof. Each Lot Owner shall also have the rights and easements granted pursuant to the rights set forth herein.

Section 3.02 Extent of Easements. The rights and easements of use and enjoyment of the Common Area created by this Declaration shall be subject to such rules and regulations as may be adopted by the Board of Directors according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

- (a) The right of the Board to suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any Assessment against the Member and his Lot remains delinquent; provided, however, that any suspension for either nonpayment of any assessment or breach of any provision in the Project Documents shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided in this Declaration;
- (b) The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area, and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the Members of the Association; and,
- (c) The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Common Area for purposes not inconsistent with the intended use of the Property as a residential planned unit development.

Section 3.03 Damage by Member. Each Member shall be liable to the Association for any damage to the Common Area (including damage to Sewer Improvements) not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other person deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Lot of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

Article IV.
Intentionally deleted.

Article V.
REPAIR AND MAINTENANCE

Section 5.01 Repair and Maintenance Rights and Duties of Association. Subject to the provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall maintain, repair and replace the Common Area and all improvements and landscaping thereon, or shall contract for such maintenance, repair and replacement to assure that maintenance of such areas are in good condition, reasonable wear and tear excepted.

Article VI.
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

Section 6.01 Creation of the Lien and Personal Obligation of Assessments. The Declarant shall establish and the Association shall, at the time of its initial organization, adopt such operating budgets for the project as are reasonably necessary to commence such operations in the full execution of all of the Associations responsibilities provided hereunder. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws of the Association: (a) Regular Assessments; (b) Extraordinary Assessments; and (c) Special Assessments.

All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot as provided herein. The Declarant shall have no responsibility for any charges for Lots Declarant still owns after ownership by others has reached a ninety percent (90%) level.

Section 6.02 Annual Budget and Purpose of Assessment. The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all the residents in the entire Project, for the improvement and maintenance of the Common Area, and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area which must be replaced on a periodic basis, creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund for maintenance and repairs of all Common Areas, including the private roadways, if any, located within the Project as shown on the Plat.

Section 6.03 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Lot in the Project, the annual maximum Regular Assessment per Lot shall be such amount as is set forth in the budget prepared by Declarant, payable in monthly installments, or such other billing period as the Board determines from time to time. Each Lot's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix

the amount of the maximum annual Regular Assessment against each Lot at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the voting power of the Association.

Section 6.04 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, and except as provided in the last sentence of this subsection 6.04, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of over sixty percent (60%) of the voting power of the Association. Notwithstanding any language in this Declaration to the contrary, a one-time extraordinary assessment in an amount equal to two months' of the then-established monthly Association Assessment shall be assessed at the time of closing of the purchase of a Lot by the first Owner thereof, to establish a reserve fund for the Association.

Section 6.05 Special Assessment. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any reconstruction or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred provided in this Declaration.

Section 6.06 Application of Excess Assessments. In the event the amount budgeted to meet Common Area expenses for a particular fiscal year proves to be excessive in light of the actual Common Area expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

Section 6.07 Allocation of Assessments, Limited Exemption of Declarant. Except for the initial exemption provided to Declarant as provided in this Section 6.07, all Lots shall be assessed the same amount. Notwithstanding the foregoing, Declarant's obligation to pay any Assessment for Lots owned by Declarant shall not begin until such time as a Lot owned by Declarant is first occupied or Declarant no longer has control of the Association, whichever is earlier.

Section 6.08 Commencement of Assessment: Due Dates. Except as provided in Section 6.06 above, the Regular Assessments provided for herein shall commence as to all Lots

in the Project on the first day of the month following closing of the sale of the first Lot in the Project. Due dates of Assessment shall be the first day of each calendar quarter or such other billing period as the Board may determine from time to time. No notice of such Assessment shall be required other than an annual notice setting forth the amount or the periodic Assessment.

Section 6.09 Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability thereof, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to recording of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Section shall be deemed to be Common Expenses collectible from all of the Lots including the Lot for which the lien was extinguished. In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the grantor up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee thereof. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

Section 6.10 Enforcement of Assessment Obligation: Priorities: Discipline. All charges, fees and/or assessments due hereunder shall be due on the first (1st) day of the month. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge of Ten Dollars (\$10.00) shall be assessed and additional Ten Dollar (\$10.00) sums shall be assessed for each month or fraction thereof from the due date until the Assessment and all late charges are paid. Each unpaid Assessment shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any institutional first mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale of said Owner's Lot, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent and attorneys' fees shall

be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorney's fees and costs, and may temporarily suspend the Association membership rights of a Lot Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

Section 6.11 Taxes Assessed Against Association Common Areas or Personal Property.

Pursuant to and consistent with Section 3.1 hereinabove, taxes assessed against the Common Area, or the personal property of the Association, shall be paid by the Owners through assessments from and collection by the Association rather than directly from the Owners.

Section 6.12 Reinvestment Fee. The Board shall have the right to establish from time to time (but shall not be required to establish) a "Reinvestment Fee" assessment in accordance with this Section and Utah Code Sections 57-1-46. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

- a. Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the Salt Lake County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the party receiving title to the Lot (the "Transferee") shall pay the Association a Reinvestment Fee as established by the Board.
- b. Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:
 - i. Any Transfer to the United States or any agency or instrumentality thereof, or the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.
 - ii. Any Transfer to the Association.
 - iii. Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is not greater than 10 percent of the value of the Lot transferred.
 - iv. Any Transfer by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Lot by the estate of an Owner.
 - v. Any Transfer made solely for the purpose of confirming, correcting, modifying, supplementing a Transfer previously recorded, or removing clouds on titles.
 - vi. Any lease of a Lot or portion thereof for a period of less than thirty (30) years.
 - vii. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

- viii. Any Transfer in connection with the foreclosure of a deed of trust or mortgage, or deed given in lieu of foreclosure.
- ix. Any involuntary Transfer.
- x. 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.
- xi. A Transfer resulting from a court order.

c. The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

Article VII.
EASEMENTS AND UTILITIES

Section 7.01 Access, Use and Maintenance Easements. Declarant expressly reserves for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Area (including the Limited Common Area) and all Lots and Dwellings as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Area shall be appurtenant to, binding upon and shall pass with the title to every Lot conveyed.

Article VIII.
INTENTIONALLY DELETED

Article IX.
INSURANCE

Section 9.01 Duty to Obtain Insurance: Types. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered desirable by the Board, but not less than Five Hundred Thousand Dollars (\$500,000.00) in combined single limit coverage (taking into consideration the requirements of mortgagees), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any other property under its jurisdiction. Such insurance shall be maintained for the benefit of the Association, the Owners, and the mortgagees, as their interests may appear as named insured; subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance as necessary, including, but not limited to, errors and omissions, directors', officers' and agents' liability insurance, medical payments, malicious mischief, and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall be deemed desirable for the Project.

Section 9.02 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

Section 9.03 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated or expired by their terms, without twenty (20) days prior written notice to the Board, Declarant, Owners and their respective first mortgagees: (provided that Declarant, such Owners or mortgagees have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

Section 9.04 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners.

Section 9.05 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.01 above shall be paid to the Board of Directors of the Association. The Board shall have full power to receive and to receipt of the proceeds with same to be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article 10 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration.

Section 9.06 Actions as Directors. Except as otherwise specifically provided in this

Declaration, the Board, acting on behalf of the Association and all Owners shall have the exclusive right to bind such parties in respect to all matters affecting insurance earned by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

Section 9.07 Required Waivers. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Subrogation of claims against the Owners and tenants of the Owners;
- (b) Any defense based upon co-insurance;
- (c) Any right of set-off, counterclaim apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured, and
- (e) Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured.

Article X.
DESTRUCTION OF IMPROVEMENTS

Section 10.01 Damage to Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy an Extraordinary Assessment for the deficiency and proceed with such restoration and repair.

Section 10.02 Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Section 10.01, the Association shall have the right, by an affirmative vote of seventy-five percent (75%) or more of the voting power of the Association, to make alternate

arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction.

Article XI.
DECLARANT'S RIGHTS AND RESERVATIONS

Section 11.01 Declarant is undertaking the work of construction of the Project on the Property. The completion of that work and the sale or other disposition of the Lots are essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors, or subcontractors from doing on the Property, whatever is reasonably necessary or advisable in connection with the completion of the work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale or other disposition; or
- (c) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale or disposition thereof; or
- (d) Prevent Declarant, its successors in interest, and assigns, from selling to a third party the rights to build upon the real property which subsequent Phases of the Project may be built. Declarant, its successors in interest and assigns, shall however, be obligated, if an election is made to develop subsequent Phases of the Project, to develop the Phases consistent with the requirements of this Declaration. So long as Declarant, owns one or more of the Lots established and described in this Declaration and except as otherwise specifically provided herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration; or
- (e) In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation or liability hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 11.02 Disclaimer Of Fiduciary Duties: Except to the extent of the limited fiduciary duties imposed upon Declarant in *Davencourt At Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65 (Utah 2009), to the maximum extent permitted by law, Declarant, and its managers, members, officers and agent hereby disclaim any and all fiduciary duties, duties or obligations to the Association, the Owners, or any other Person of any kind or nature.

Section 11.03 Indemnity. If Declarant or any director, officer, manager, member or agent of Declarant is made a party, or is threatened to be made party to or is involved as a defendant in any action, suit or proceeding, by reason of the fact that such Person is or was a manager or member of the Declarant, or is or was serving at the request of the Declarant as a director, officer or representative of the Association or Declarant, shall be indemnified and held harmless to the fullest extent legally permissible under the laws of the State of Utah as in effect from time to time, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Person in connection therewith. Such right of indemnification shall be a contract right that may be enforced in any manner desired by such Person. Such right of indemnification shall not be exclusive of any other right that such managers, directors, members or representatives may have or hereafter acquire, and without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any other agreement, vote of members, provision of law or otherwise, as well as their rights under this Section.

Section 11.04 Expenses Advanced. Expenses incurred by any Person in defending any action, suit or proceeding by reason of any act or omission of Declarant, managers or members acting as a director manager or member shall be paid by the Association as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt or any undertaking by or on behalf of the Person to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the Association.

Section 11.05 Insurance. Without limiting the application of the foregoing, the Association shall purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Declarant, a manager or member of the Declarant or a member of the Board of the Association against any liability asserted against such Person and incurred in any capacity or arising out of such status, to the fullest extent permitted by the laws of the State of Utah, whether or not the Association would have the power to indemnify such person. The indemnification and advancement of expenses provided in this Article shall continue for a person who has ceased to be a director, member, manager, employee or agent, and inures to the benefit of the heirs, executors and administrators of such a person.

Article XII. RIGHTS OF MORTGAGEES

Section 12.01 In order to induce various lenders and lending agencies to participate in

the financing of Lots within the Project, this Article 12 is included in this Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this Article 12, the terms "**Eligible I Holder**" and "**Eligible Insurer Guarantor**" refer to an Institutional First Mortgage Holder, Insurer or Guarantor of any Institutional First Mortgage on a Lot, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Section 12.06 or Section 12.07 below.

Section 12.02 Notwithstanding any other provision of the Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any Institutional First Mortgagee of a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage, such Lot shall remain subject to the Project Documents.

Section 12.03 Each Institutional First Mortgagee of a mortgage encumbering any Lot, which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued after the time such mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Lot.

Section 12.04 Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours; (2) require from the Association the submission of annual financial reports and other financial data; (3) receive written notice of all meetings of the Members; and (4) designate, in writing, a representative to attend all such meetings.

Section 12.05 Each Owner hereby authorizes the Institutional First Mortgagee of a first mortgage on his Lot to furnish information to the Board concerning the status of the first mortgage and the loan which it secures.

Section 12.06 Lot Owners shall have the right to amend the Project Documents according to their terms, subject to the rights of Eligible Holders to participate in the amendment process as provided in this Section. Amendments of a material nature shall be agreed to by (i) the Declarant (so long as there are two classes of voting power); and (ii) Lot Owners representing at least sixty-seven percent (67%) of the total votes in the Association (excluding votes residing in Declarant, so long as two classes of voting power exist). Additionally, approval must be obtained from Eligible Holders representing at least fifty-one percent (51 %) of the votes of Limits that are subject to mortgages held by Eligible Holders. A change to any of the following would be considered as material:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;

- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Area, or rights to its use;
- (f) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (g) Insurance or fidelity bonds,
- (h) A decision by the Association to establish self management when professional management had been previously required by an Eligible Holder;
- (i) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (j) Any action to terminate the legal status of the Project after substantial destruction or condemnation (when Lot Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation, approval must be obtained from Eligible Holders representing at least sixty-seven percent (67%) of the votes of Lot Owners that are subject to mortgages held by Eligible Holders); or
- (k) Any provision that expressly benefit mortgage holders, insurers or guarantors.

If the Association determines that an addition or amendment to the Project Documents is not a material change, the approval of Eligible Holders shall be implied by the failure of an Eligible Holder to submit a response to a written proposal for an amendment within thirty (30) days after the proposal is made.

Section 12.07 Each Eligible Holder and each Eligible Insurer or Guarantor is entitled to timely written notice of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its mortgage;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.

(e) In addition to the foregoing, the Board shall have the power and authority, without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of any generally recognized lending institution so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering Lots. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Lots, if such agencies or lending institutions approve the Property as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

Article XIII.
DURATION AND AMENDMENT

Section 13.01 Duration. This Declaration shall continue in full force for a term of ninety-nine (9) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set forth in Section 13.02. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the concomitant membership of the Association, as long as this Declaration shall continue in full force and effect

Section 13.02 Termination. This Declaration may only be terminated by the unanimous written agreement of all Owners in the Property. Following termination, Mortgagees holding Mortgages on the Lots which were recorded before termination may enforce those liens in the same manner as any lienholder. In the event of the dissolution of the Association, the Common Area shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

Section 13.03 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in a reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by all Owners at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members of the Association representing not less than sixty-seven percent (67 %) of the total voting power of the Association (both classes combined). Notwithstanding the foregoing, the following special voting provisions shall apply:

(a) Amendments of a material nature shall be enacted in compliance with the provisions of Article 12 of this Declaration;

- (b) The specified percentage of the voting power necessary to amend a specified provision of this Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision;
- (c) A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Lots have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact.

The Association shall maintain in its files the record of all such votes of written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of Institutional First Mortgages shall be signed and sworn to by such first mortgagees.

Article XIV.
GENERAL PROVISIONS

Section 14.01 Enforcement. The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of three (3) or more Lot Owners, as their respective interests may appear, with respect to any cause or action relating to the Common Area. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 14.02 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

Section 14.03 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 forty-eight (48) hours 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.

Section 14.04 Conflict of Project documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Plat Map; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of Institutional First Mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

The undersigned, being the Declarant herein, has executed this Declaration on the 19th day of August, 2020.

DECLARANT:

MVIII LLC,
a Utah limited liability company

By: Ryan Peterson
Its: MANAGER

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this 19th day of August, 2020, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared Ryan Peterson, known to me to be a managing member of MVIII LLC, a Utah limited liability company, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument by authority of its operating agreement.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Victor Barnes
Notary Public

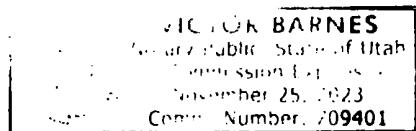
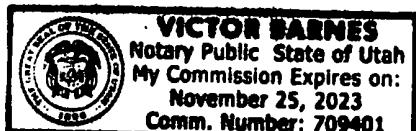


Exhibit "A"
Legal Description

All of Lots 201 through 212, inclusive, in the Peterson Commons Phase 2 Subdivision as recorded in the Office of the Salt Lake County Recorder on January 7th, 2020 as Entry #13164326 in Book 2020 Page 005.

Exhibit "B"
Plat Map

Exhibit "C"
Sewer Map

