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Gary W. Ott
Recorder, Salt Lake County, UT
MORRIS SPERRY
BY: eCASH, DEPUTY - EF 41 P.

WHEN RECORDED RETURN TO:

ROSECREST VILLAGE HOMEOWNERS
ASSOCIATION, INC.
C/O FCS COMMUNITY MANAGEMENT
P.O. BOX 5555
DRAPER, UT 84020-6538

**SECOND AMENDMENT TO THE
AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF ROSECREST VILLAGE TOWNHOMES**

THIS SECOND AMENDMENT TO AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROSECREST VILLAGE TOWNHOMES (the "Second Amendment") is entered as of _____, 2015, by the ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation (the "Association").

RECITALS

A. On July 5, 2000, the DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ROSECREST, A PLANNED UNIT DEVELOPMENT was recorded as Entry No. 7673671 with the Salt Lake County Recorder's office. This declaration was further recorded on July 5, 2000, as Entry No. 7673672 with the Salt Lake County Recorder's office.

B. On August 10, 2001, the SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROSECREST, A PLANNED UNIT DEVELOPMENT for the Association was recorded as Entry No. 7971981 with the Salt Lake County Recorder's office.

C. On October 24, 2006, the ARTICLES OF INCORPORATION OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. were filed with the Utah Division of Corporations.

D. On October 24, 2006, the BYLAWS OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. (the "Bylaws") were adopted. These Bylaws were not recorded with the Salt Lake County Recorder's office.

E. On November 21, 2006, the ROSECREST VILLAGE PLAT 1 was recorded as Entry No. 9915744 with the Salt Lake County Recorder's office.

F. On November 21, 2006, the AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ROSECREST VILLAGE TOWNHOMES (the "Declaration") for the Association was recorded as Entry No. 9916077 with the Salt Lake County Recorder's office.

G. On February 23, 2007, the ROSECREST VILLAGE PLAT 2 was recorded as Entry No. 10012784 with the Salt Lake County Recorder's office.

H. On March 27, 2008, the ROSECREST VILLAGE P.U.D. PLAT 3 was recorded as Entry No. 10383772 with the Salt Lake County Recorder's office.

I. On January 8, 2009, the FIRST AMENDMENT TO AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICITIONS (the "First Amendment") for the Association was recorded as Entry No. 10594113 with the Salt Lake County Recorder's office.

J. On March 11, 2011, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED was recorded as Entry No. 11148861 with the Salt Lake County Recorder's office.

K. On July 22, 2011, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED 2 was recorded as Entry No. 11216850 with the Salt Lake County Recorder's office.

L. On October 26, 2011, the ROSECREST VILLAGE P.U.D. PLAT 3, AMENDED 3 was recorded as Entry No. 11268327 with the Salt Lake County Recorder's office.

M. On May 22, 2012, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED 5 was recorded as Entry No. 11395832 with the Salt Lake County Recorder's office.

N. On January 8, 2013, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED 4 was recorded as Entry No. 11552059 with the Salt Lake County Recorder's office.

O. On April 19, 2013, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED 6 was recorded as Entry No. 11622101 with the Salt Lake County Recorder's office.

P. On June 12, 2014, the ROSECREST VILLAGE P.U.D. PLAT 3 AMENDED 7 was recorded as Entry No. 11864865 in the Salt Lake County Recorder's office.

Q. This Second Amendment affects the Property, which is located in Salt Lake County, State of Utah, and described on the attached Exhibit A, which is incorporated herein by this reference.

R. The Amended Bylaws of the Association, attached hereto as Exhibit B, supersede and replace any previous bylaws of the Association and any amendments thereto.

S. This Second Amendment was approved by sixty-seven percent (67%) of the total voting interests of the Association present in person or by proxy at a meeting of the Association held on _____, 2015, and by any Eligible Mortgagees pursuant to the Declaration and Utah Code Ann. § 57-8a-210.

T. By approving and adopting this Second Amendment, the Association and the Eligible Mortgagees approve and adopt each of the previously recorded amendments to the ROSECREST VILLAGE P.U.D. PLAT 3, the previously recorded amendments and supplements to the Declaration, which amendments and supplements are set forth in these Recitals, and the

Amended Bylaws of Rosecrest Village Homeowners Association, Inc., which are attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the foregoing Recitals, the Association hereby executes this Amendment to the Declaration, which shall be effective as of its recording date with the Salt Lake County Recorder's office.

1) **Amendment No. 1.** The following language is added to Section 4(c) of Article I "Definitions" of the Declaration as sub-section (i):

(i) Any structure, building, foundation, column, girder, beam, support, wall, roof, stairway, yard, landscaping, fence, driveway, service and parking area located on a Single Family Lot is expressly excluded from the definition of "Common Areas or Common Areas and Facilities."

2) **Amendment No. 2.** The following language is added to Section 12 of Article I "Definitions" of the Declaration as sub-sections (a) to (c):

(a) The term "Single Family Lots" shall mean those Lots designated as Lots, or Buildings, 60 through 73, inclusive, on the Rosecrest Village P.U.D. Plat 3 Amended 6. A single family home constructed on a Single Family Lot shall be considered a "Living Unit" for purposes of this Declaration.

(b) The term "Townhome and Cluster Lots" shall mean all Lots/Buildings subject to this Declaration other than the Single Family Lots.

(c) All references to the term "Lot" or "Lots", as defined in this Section 12 of Article I of the Declaration, throughout the Declaration, as amended, shall be deemed to include all Single Family Lots and Townhome and Cluster Lots.

3) **Amendment No. 3.** The following language is added to Section 17 of Article I "Definitions" of the Declaration as sub-section (a):

(a) All references to the term "Owner" or "Owners", as defined in this Section 17 of Article I of the Declaration, throughout the Declaration, as amended, shall be deemed to include Owners of all Single Family Lots and Townhome and Cluster Lots.

4) **Amendment No. 4.** The following language is added as new Sections 22, 23, and 24 of Article I "Definitions" of the Declaration:

22. The term "Bylaws" shall mean the amended bylaws of the Association attached hereto as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded in the records of the County Recorder of Salt Lake County, Utah

23. The term "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of

those aspects of the Parcels which are maintained by the Association, if any; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) utilities (other than utilities that are separately metered and charged to the Parcels), extermination, security, gardening, landscaping, snow removal, and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Community Association Act (Utah Code Ann. § 57-8a-101 et seq., the “Act”) or the Governing Documents (as defined by the Act); and (h) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

24. Notwithstanding any provision to the contrary contained in Article V of the Declaration, the term “Townhome and Cluster Obligations” shall mean the cost and expense to maintain, repair, and insure the buildings and structures located on a Townhome and Cluster Lot shall not be included in any assessment or special assessment for any Single Family Lot. The Townhome and Cluster Obligations shall be allocated and assessed only to the Owners of the Townhome and Cluster Lots.”

5) **Amendment No. 5.** All of Section 3 of Article V “Assessments” of the Declaration is hereby deleted in its entirety and replaced with the following provisions:

3. ***Special Assessments.*** The Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, repair, or replacement of an improvement, personal property, or fixtures upon the Common Areas. Any special assessment for a Townhome and Cluster Obligation that will be in excess of \$500 per year per Townhome and Cluster Lot must be assented to by a majority of the Owners of the Townhome and Cluster Lots present in person or represented by proxy entitled to cast a vote at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Owner in accordance with the notice provisions set forth in the Association’s Bylaws.

6) **Amendment No. 6.** All of Section 5 of Article V “Assessments” of the Declaration is hereby deleted in its entirety and replaced with the following provisions:

5. ***Rate of Assessment.*** The Association shall maintain a budget for the each of the following Association expenses for the purpose of calculating assessments for the Lots: (a) Townhome and Cluster Obligations; and (b) all remaining Common Expenses (with the Townhome and Cluster Obligations removed).

(a) Assessments for Townhome and Cluster Obligations shall be fixed at a uniform rate for all Townhome and

Cluster Lots upon which construction of a Living Unit has been commenced. For any Townhome and Cluster Lot upon which construction of a Living Unit has not commenced, the rate of assessments for the Townhome and Cluster Obligations shall equal two-thirds (2/3) of the uniform rate set for Townhome and Cluster Lots upon which construction of the Living Unit has commenced or has been completed.

(b) Assessments (but excluding assessments for Townhome and Cluster Obligations) for the remaining Common Expenses shall be fixed at a uniform rate for all Lots upon which construction of a Living Unit has been commenced. For any Lot upon which construction of a Living Unit has not commenced, the rate of assessments for such Lot shall equal two-thirds (2/3) of the uniform rate set for the assessments upon which construction of the Living Unit has commenced or has been completed.

(c) Single Family Lots are assessed only the rate of the assessment for Common Expenses (less the Townhome and Cluster Obligations) as set forth in this Section 6. Townhome and Cluster Lots are assessed this assessment for Common Expenses in addition to the assessment for the Townhome and Cluster Obligations.

7) **Amendment No. 7.** The following language is added as Section 9 of Article V “Assessments” of the Declaration:

9. ***Special Assessments to Individual Lots.*** Special Assessments may be assessed by the Association against a particular Lot and its Owner for:

(a) Costs incurred in bringing an Owner or the Owner’s Lot into compliance with the provisions of the Governing Documents;

(b) Any increased maintenance cost or expense (e.g. increased cost for landscaping maintenance) as a result of the Owner installation of a fence;

(c) Any other charge designated as pertaining to an individual Lot in the Governing Documents;

(d) Fines, late fees, collection charges, and interest; and

(e) Attorneys’ fees, costs and other professional expenses as allowed under this Declaration and other governing documents of the Association.

8) **Amendment No. 8.** The following language is added as Section 1(a) of Article VI "Operation and Maintenance" of the Declaration:

(a) In addition to all of the other items listed in the Declaration, as amended, each Owner of a Single Family Lot shall be responsible for the maintenance and repair of the structures, buildings and landscaping located on the Owner's Single Family Lot.

9) **Amendment No. 9.** The following language is added as Section 2(a) of Article VI "Operation and Maintenance" of the Declaration:

(a) In addition to all of the other items listed in the Declaration, the Association shall be responsible for the maintenance and repair of the roofs, exterior walls and other exterior parts of any structure or building located on a Townhome and Cluster Lot; however, the Association shall have no obligation to maintain and repair any structure, building or landscaping located on a Single Family Lot.

10) **Amendment No. 10.** All of Section 4 of Article VI "Operation and Maintenance" of the Declaration is hereby deleted in its entirety and replaced with the following provisions:

4. ***Association Access to Lots.*** The Association shall have an irrevocable right of access to each Lot (including a Single Family Lot or a Townhome and Cluster Lot) to make emergency repairs and to do other work or things reasonably necessary or useful for the proper use or maintenance of a Lot or Living Unit or operation of the Project.

11) **Amendment No. 11.** The following language is added as a new Section 5 to Article VI "Operation and Maintenance" of the Declaration:

5. ***Self Help.*** Each Lot (including Single Family Lots and Townhome and Cluster Lots) and Living Unit (including any Living Unit located on a Single Family Lot or a Townhome and Cluster Lot) shall be properly maintained by the Owner so as not to detract from the appearance of the Project and so as not to adversely affect the value or use of any other Lot and Living Unit. In the event that (A) any portion of any Lot or Living Unit is maintained in a manner that presents a public or private nuisance, or substantially detracts from the appearance or quality of the surrounding Lots and Living Units or other areas of the Project that are substantially affected thereby or related thereto, or (B) any portion of a Lot or Living Unit is used in a manner that violates this Declaration or any rule or regulation, or (C) the Owner of any Lot fails to perform any of its obligations under this Declaration or any rule or regulation, then the Board of Trustees may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and give notice thereof to the offending Owner that, unless corrective action is taken within seven days, the Board of Trustees may cause such action to be taken by the Association at the offending Owner's cost. If the requisite corrective action has not been completed within the seven day period (provided, however, if the corrective action reasonably requires more than seven days to complete and such corrective action is commenced within the seven day period and is thereafter diligently

pursued to completion, then the time period to complete the corrective action shall be extended by the Board of Trustees accordingly), the Board of Trustees shall be authorized and empowered to: (i) enter the Lot or Living Unit and cause such action to be taken, and the cost thereof shall become an individual assessment against the offending Owner and the Owner's Lot and shall be payable within ten days after demand therefor and secured by an assessment lien; (ii) record a notice of violation in the Official Records; (iii) impose a fine commensurate with the severity of the violation; or (iv) bring an action for specific performance and/or damages against the Owner (including collection costs and attorneys' fees). In any action taken pursuant to this Section, the Owner shall be personally liable for, and the assessment lien shall be deemed to secure the amount of, the Association's collection costs and attorneys' fees. Amounts not paid when due under this Section may be collected in accordance with Section 8 of Article V of the Declaration.

12) **Amendment No. 12.** The following language is added as new Sections 22, 23, 24, 25, and 26 to Article VII "Use and Building Restrictions" of the Declaration, as amended by the First Amendment:

22. **Applicable to All Lots and Living Units.** Except as expressly set forth in the Declaration, the restrictions set forth in Article VII of the Declaration, as amended, and elsewhere apply to all Lots (including Single Family Lots and Townhome and Cluster Lots).

23. **Sprinkler Controller Boxes.** Sprinkler controller boxes used in connection with a Single Family Lot shall be located on the exterior portion of the Living Unit and installed in a manner so as to minimize views from streets, sidewalks, parks and other Common Areas.

24. **Fences on Single Family Lots.** All fences installed on Single Family Lots must be approved in writing by the Rosecrest Design Review Committee or the Board of Trustees prior to the installation of the fence. No fences installed on Single Family Lots may be installed to extend into the front yard of the Lot past the exterior wall of the front of the Living Unit. The Association must have access to the sprinkler controller box located on the exterior of the Living Unit. If the sprinkler controller box is located within the fenced-in area on the Single Family Lot, the Owner grants the Association the right to enter the Single Family Lot to access the sprinkler controller box. The Association may regulate (by adopting a rule or policy) the color, style, material, and make of any fences installed on Single Family Lots. The Association may further regulate the location and installation of any gate in the fence for purposes of the Association's access to the sprinkler controller box.

25. **Fences on Certain Townhome and Cluster Lots.** To the extent that any Townhome and Cluster Lots have Limited Common Area appurtenant to such Lot, the Owner of the Lot may install a fence around such Limited Common Area subject the Rosecrest Design Review Committee or the Board of Trustees' prior written approval for the installation of the fence. The Association may regulate (by adopting a rule or policy) the color, style, material, and make of any fences and location of any gates installed on Townhome and Cluster Lots. In the event that the installation of the fence on a

Townhome or Cluster Lot increases the Association's maintenance costs (i.e.: costs for maintaining the landscaping of the fenced-in Limited Common Area), the Association may assess the Owner of the Lot where the fence is installed for such additional costs and expenses under Article V, Section 9.

26. **Mortgagees.** From and after the time that a Mortgagee acquires title to a Lot pursuant to foreclosure or any arrangement or proceeding in lieu thereof, the Mortgagee be shall subject to the terms and conditions of the Declaration, as amended, as an Owner including, without limitation, the obligation to maintain the Lots and Living Units owned by the Mortgagee and the obligation to pay assessments accruing thereafter with respect to such Lots and Living Units.

13) **Amendment No. 13.** All of Section 3 of Article VIII "Architectural Control" of the Declaration is hereby deleted in its entirety and replaced with the following provision:

3. **Submission to Committee.** No Living Unit (including any Living Unit located on a Single Family Lot or a Townhome and Cluster Lot), accessory or addition to a Living Unit, other structure or building, or fence shall be constructed, modified, remodeled or maintained, and no grading or removal of natural vegetation shall occur, on a Lot without the prior written approval of the Rosecrest Design Review Committee (a/k/a the "RDRC").

14) **Amendment No. 14.** The following language is added as a new Section 5 to Article IX "Association Insurance" of the Declaration:

5. **Insurance.** The Association shall at all times purchase, maintain in force, and pay the premium for insurance on all Common Areas and Facilities within the Project satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time (the "Statutory Insurance Requirements") and to the extent not contrary to nor inconsistent with the Statutory Insurance Requirements, satisfying at least the following requirements:

(a) The Association shall have the authority to and shall obtain insurance for all Common Areas and Facilities within the Project, and also for all structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas and Facilities, including the Limited Common Areas, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks"

endorsement, a policy that includes the “broad form” covered causes of loss, in amounts at all times (i) that are sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and (ii) that are not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

(i) provide coverage for built-in or installed improvements, fixtures, and equipment that are part of a Unit, and shall provide for coverage of interior walls, windows and doors, and the frames, sashes, jambs and hardware therefor, even though these Improvements may be parts of Units;

(ii) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor, and, that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interests superior to an interest of the first mortgage lender;

(iii) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;

(iv) have a deductible amount in a reasonable amount approved by the Board of Trustees;

(v) be paid for by the Association through assessments of the Owners;

(vi) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners; and

(vii) be primary, even if an Owner has other insurance that covers the same loss.

(b) The Association shall have no obligation to provide any insurance for any structure or building located on a Single Family Lot. The obligation to obtain and maintain in effect such insurance shall be the responsibility of the Owner of a Single Family Lot.

15) **Amendment No. 15.** The following language is added to Section 1 to Article XII “Miscellaneous” of the Declaration as sub-section (a):

(a) In the event that the Association takes action against an Owner to enforce the terms of the Declaration or other provisions of the Association’s Governing Documents (as such term is defined by the Act), the Association may assess all reasonable attorney fees and costs associated with the enforcement actions against the Owner, regardless of whether a lawsuit is initiated.

16) **Amendment No. 16.** All of Section 5(d) of Article XII “Miscellaneous” of the Declaration is hereby deleted in its entirety and replaced with the following provision:

(d) The consent of Eligible Mortgagees holding Mortgages on at least fifty-one percent (51%) of the Lots which are then subject to Mortgages held by Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration, Plat or the Articles which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens or subordination of liens; (iii) reserves for maintenance, repair, and replacement of the Common Areas and Facilities; (iv) insurance for fidelity bonds; (v) rights to use the Common Areas and Facilities; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Lot; (ix) the interests in the Common Areas and Facilities or Limited Common Areas; (x) convertibility of Lots into Common Areas or of Common Areas into Lots; (xi) leasing of Lots; (xii) imposition of any rights of first refusal or similar restrictions on the right of a Lot Owner to sell, transfer, or otherwise convey his or her Lot; (xiii) any provisions which are for the express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (xiv) the requirement that the Project be professionally managed rather than self-managed. An addition or amendment shall not be considered material for purposes of this Paragraph (d) if it is for the purpose of correcting technical errors, or for clarification only.

The vote and consent requirements set forth in the foregoing Paragraph (d) of this Section shall not be applicable to additions or amendments to this Declaration, the Plat, or the Articles which implement a decision concerning whether or not Restoration of the Common Areas should be undertaken or concerning the nature of such Restoration in accordance with the provisions of Sections 1 through 5 of Article X hereof in the event of Partial or Substantial Destruction or Condemnation, or which relate to the addition to the Project of any portion of the Additional land and Comply with Sections 1 through 3 of Article XI hereof. In addition, the granting by the Association of any permit, license, or easement for utility, or similar purposes pursuant to the right and authority of the Association set forth in Paragraph (C) of Section 4 of Article IV hereof, shall not require an addition or amendment to this Declaration, the Plat, or the Articles and shall not be restricted in any way by the provisions and requirements of this Section 5

17) **Conflicts.** All remaining provisions of the Declaration and any prior amendments not specifically amended in this Second Amendment shall remain in full force and effect. In the

EXHIBIT A

Legal Description & Parcel Information:

Commencing at the North Quarter corner of Section 12, Township 4 South, Range 2 West, Salt Lake Base and Meridian; (Basis of Bearing North 89°50'19" West – 2671.237 feet between the North Quarter corner and the Northwest Corner of said Section 12), thence North 89°50'19" West along the north line of said section for 722.585 feet; thence South 00°09'41" West perpendicular to said section line for 1285.468 feet to a point on the southerly boundary line of Rosecrest Plat 1-F, as recorded in Book 2001P at Page 256 in the Salt Lake County records office; said point also being the POINT OF BEGINNING; thence along the southerly boundary line of said Rosecrest Plat 1-F the following two (2) calls: with a non-tangent curve to the left having a radius 25.000 feet, whose center bears South 74°48'07" East, with a central angle of 90°00'00" (chord bearing and distance of North 60°11'53" East – 35.355 feet) for an arc distance of 39.270 feet, thence South 74°48'07" East for 536.352 feet; thence with a curve to the left having a radius of 3045.000 feet, with a central angle of 09°20'13" (chord bearing and distance of South 79°28'14" East – 495.666 feet) for an arc distance of 496.215 feet; thence with a curve to the right having a radius of 25.000 feet, with a central angle of 88°58'25" (chord bearing and distance of South 39°39'08" East – 35.037 feet) for an arc distance of 38.822 feet to the northwest corner of Rosecrest Plat M, as recorded in Book 2004P at Page 152 in the Salt Lake County records office; thence along the westerly boundary line of said Rosecrest Plat M the following twelve (12) calls: South 04°50'04" West for 5.028 feet; thence with a curve to the left having a radius of 780.000 feet, with a central angle of 16°02'30" (chord bearing and distance of South 03°11'10" East – 217.670 feet) for an arc distance of 218.383 feet; thence with a compound curve to the left having a radius of 1030.000 feet, with a central angle of 45°07'19" (chord bearing and distance of South 33°46'05" East – 790.352 feet) for an arc distance of 811.151 feet; thence with a compound curve to the left having a radius of 480.000 feet, with a central angle of 14°36'20" (chord bearing and distance of South 63°37'54" East – 122.029 feet) for an arc distance of 122.360 feet; thence with a compound curve to the left having a radius of 730.000 feet, with a central angle of 12°46'39" (chord bearing and distance of South 77°19'24" East – 162.460 feet) for an arc distance of 162.797 feet; thence with a reverse curve to the right having a radius of 150.000 feet, with a central angle of 29°18'42" (chord bearing and distance of South 69°03'22" East – 75.903 feet) for an arc distance of 76.738 feet; thence with a reverse curve to the left having a radius of 150.000 feet, with a central angle of 16°12'19" (chord bearing and distance of South 62°30'11" East – 42.284 feet) for an arc distance of 42.426 feet; thence South 70°36'21" East for 80.259 feet; thence with a curve to the right having a radius of 25.000 feet, with a central angle of 95°33'53" (chord bearing and distance of South 22°49'24" East – 37.030 feet) for an arc distance of 41.698 feet; thence with a compound curve to the right having a radius of 1442.000 feet, with a central angle of 01°29'12" (chord bearing and distance of South

25°42'08" West – 37.417 feet) for an arc distance of 37.418 feet; thence South 26°26'45" West for 434.235 feet; thence with a curve to the left having a radius of 1058.000 feet, with a central angle of 06°26'29" (chord bearing and distance of South 23°13'30" West – 118.879 feet) for an arc distance of 118.942 feet to a point on the northerly boundary line of Rosecrest Plat O, as recorded in Book 2004P at Page 228 in the Salt Lake County recorders office; thence along the northerly boundary line of said Rosecrest Plat O the following fourteen (14) calls: North 63°14'27" West for 152.696 feet; thence North 75°21'20" West for 527.039 feet; thence North 71°40'32" West for 168.944 feet; thence North 69°29'27" West for 290.140 feet; thence North 85°52'16" West for 300.305 feet; thence South 22°28'31" East for 54.729 feet; thence South 27°38'41" East for 52.325 feet; thence South 63°35'43" West for 140.851 feet; South 60°01'52" West for 50.000 feet; thence South 60°19'38" West for 128.594 feet; thence North 45°30'04" West for 36.088 feet; thence North 15°41'30" West for 129.644 feet; thence North 04°59'59" East for 124.088 feet; thence North 83°40'18" West for 205.447 feet to a point on the easterly boundary line of Rosecrest Plat N, as recorded in Book 2004P at Page 124 in the Salt Lake County recorders office; thence along the easterly boundary line of said Rosecrest Plat N the following eight (8) calls: North 22°28'39" East for 129.459 feet; thence North 08°59'17" East for 256.599 feet; thence North 14°25'32" East for 552.575 feet; thence North 24°29'30" East for 247.929 feet; thence North 12°01'17" West for 117.698 feet; thence North 87°09'17" West for 71.208 feet; thence North 74°48'07" West for 126.598 feet; thence North 15°11'53" East for 141.711 feet to the POINT OF BEGINNING.

Containing 48.5399 acres

Plat 1:

32-12-253-059-0000	32-12-253-058-0000	32-12-253-153-0000	32-12-253-154-0000
32-12-253-023-0000	32-12-253-024-0000	32-12-253-025-0000	32-12-253-026-0000
32-12-253-019-0000	32-12-253-020-0000	32-12-253-021-0000	32-12-253-022-0000
32-12-253-027-0000	32-12-253-028-0000	32-12-253-029-0000	32-12-253-030-0000
32-12-253-036-0000	32-12-253-035-0000	32-12-253-034-0000	32-12-253-033-0000
32-12-253-032-0000	32-12-253-031-0000	32-12-253-049-0000	32-12-253-048-0000
32-12-253-047-0000	32-12-253-046-0000	32-12-253-045-0000	32-12-253-037-0000
32-12-253-038-0000	32-12-253-039-0000	32-12-253-040-0000	32-12-253-041-0000
32-12-253-042-0000	32-12-253-043-0000	32-12-253-044-0000	32-12-253-010-0000
32-12-253-009-0000	32-12-253-008-0000	32-12-253-007-0000	32-12-253-006-0000
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EXHIBIT B

(AMENDED BYLAWS OF ROSECREST VILLAGE
HOMEOWNERS ASSOCIATION, INC.)

**AMENDED AND RESTATED BYLAWS
FOR**

**ROSECREST VILLAGE
HOMEOWNERS ASSOCIATION, INC.**

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**AMENDED AND RESTATED BYLAWS
OF
ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC.**

These AMENDED AND RESTATED BYLAWS OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. are hereby adopted and established as the Bylaws of the Rosecrest Village Homeowners Association, Inc. (the "Association") and are effective as of the date they are recorded in the Salt Lake County Recorder's Office.

RECITALS

A. Capitalized terms in these Bylaws are defined in Article 1 or in other Sections of these Bylaws or the Declaration of the Association.

B. On October 24, 2006, the ARTICLES OF INCORPORATION OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. (the "Association") were filed with the Utah Division of Corporations.

C. On October 24, 2006, the BYLAWS OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. (the "Original Bylaws") were adopted. The Bylaws were not recorded with the Salt Lake County Recorder's office.

D. On November 21, 2006, the AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROSECREST VILLAGE TOWNHOMES ("the Amended Declaration") was recorded in the public records of Salt Lake County, Utah, as Entry No. 9916077, Book 9383, Pages 7780-7818. (Amended Declaration and any Amendments thereto the "Declaration").

E. These AMENDED AND RESTATED BYLAWS OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. supersede and replace any previous bylaws of the Association and any amendments thereto. These AMENDED AND RESTATED BYLAWS OF ROSECREST VILLAGE HOMEOWNERS ASSOCIATION, INC. are hereinafter referred to as the "Bylaws."

F. The Association hereby adopts these Bylaws which (along with and subject to any future amendments) shall be the sole Bylaws for the Project. These Bylaws supersede and replace in their entirety the Original Bylaws and any other previously recorded or unrecorded bylaws or amendments thereto of the Project.

G. The Association is the authorized representative of the Owners of certain real property in the Project known as Rosecrest Village, located in Salt Lake County, state of Utah and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

H. Neither Rosecrest, Inc., Rosecrest Village, LLC, nor any successor entity (these entities and their successors, the "Declarant") owns any property in the Project. There are no existing Declarant-owned, Class B memberships as such memberships are described in the Declaration or in the Original Bylaws. Any Class B memberships that may have existed have converted to Class A memberships. All Owners in the Project are Class A members.

I. These Bylaws are adopted to define the rights of the Association and the Owners in furtherance of the Association's efforts to efficiently and economically provide a quality living environment, and to enable the Association to protect and enhance the value of the Lots in the future.

J. The Owners, through the Association, desire to establish the Terms and Conditions for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project and/or Property.

NOW, THEREFORE, for the reasons recited above and subject to the Terms and Conditions set forth below, the Association hereby amends and replaces the Original Bylaws and any amendments thereto with the following:

**ARTICLE I
DEFINITIONS, NOTICE, PRINCIPAL OFFICE**

- 1.1 Definitions. Except as otherwise provided herein, or as may be required by the context, all terms defined in the Declaration, as may be amended from time to time, shall have such defined meanings when used in these Bylaws.
- (a) "Act" shall mean the version of the Community Association Act codified beginning at Section 57-8a-101, Utah Code Annotated, in effect at the time this Declaration is recorded.
 - (b) "Allocated Interest" shall mean the equal interest of each Owner in the Common Expense liability, for the purposes of voting in the Association, and for other purposes indicated in this Declaration or the Act. All owners shall have equal Allocated Interests.
 - (c) "Assessment" shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration.
 - (d) "Board" or "Board of Trustees" shall mean the entity with primary authority to manage the affairs of the Association.
 - (e) "Board Member" shall mean a duly qualified and elected or appointed member of the Board of Trustees.
 - (f) "Governing Documents" shall refer to the Declaration, the Plats, these Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.
 - (e) "Manager" shall mean any entity or Person engaged by the Board to manage the Project.
 - (f) "Parcel" shall mean and refer to any one of the homes in the Project, and may be designated on the Plat as a "Lot" or a "Parcel." Except where the context specifically requires otherwise, reference to a Parcel shall include reference to the Allocated Interest appurtenant to such Parcel.
 - (g) "Person" shall refer to a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental

subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.

- (h) "Rule" shall mean shall mean and refer to the rules adopted by the Association.
- (i) "Terms and Conditions" shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

1.2 Notice. Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:

- (a) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
- (b) By a written notice placed in 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 so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (c) By electronic transmission to an Owner which includes:
 - (1) An email that is sent to an e-mail address provided by the Owner for the purpose of Association communications; or an email that is emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered when received or five (5) days after it is sent.
 - (2) By facsimile (whether to a machine or to an electronic receiving lot) that is sent to a facsimile number provided by the Owner for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered when received or five (5) days after it is sent.
 - (3) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Any notice sent by text message shall be deemed delivered when received or five (5) days after it is sent.
- (d) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (e) Notwithstanding Subsection (a), (b), (c), and (d) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

- (f) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot, whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot.
 - (g) In the case where posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the Lot and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- 1.3 Principal Office. The principal office of the Association shall be located at 12519 S. Business Park Dr., Suite 100, Draper, UT 84020. The principal office of the Association may be changed by filing documents with the Utah Division of Corporations and Commercial Code.

ARTICLE II OWNERS

2.1 Membership.

- (a) Every Person who is the Owner of a Lot or Parcel that is subject to Assessment shall be a Member of the Association.
- (b) Except as otherwise provided herein, an Owner's Allocated Interest in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee of ownership to the Lot or Parcel.

2.2 Annual Meetings.

- (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
- (b) Date and Time. The Board shall choose the time and date for the annual meeting of Owners. The annual meeting shall be in June, but the Board may, from time to time, change the date and time for the annual meeting of the Owners.
- (c) Purpose. The Annual Meeting shall be held for any, or all, of the following purposes:
 - (1) Electing members of the Board;
 - (2) Approving the minutes of the prior annual meeting; and
 - (3) Transacting such other business as may properly come before the meeting.
- (d) Election of Board Members. If the election of the Board Members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a

special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.3 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than twenty percent (20%) of the Allocated Interests of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose for the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager or the President, who shall then call, provide notice of, and conduct a special meeting within thirty (30) days of receipt of the request that shall address the purpose identified on the request, but no other issues. If the Manager or President refuses to call, provide notice, or conduct a special meeting within thirty (30) days of receipt of the request, any Owner who signed the request may call, provide notice, and conduct the special meeting.
- (c) **Business at Special Meetings.** The only business that may be conducted at a special meeting of the Owners is the business that was included on the notice of special meeting.

2.4 Place of Meetings. The Board may designate the office of the Manager or any place within ten (10) miles of the Project as the place of meeting for any annual or special meeting.

2.5 Notice of Meetings. The Board shall cause written notice of the time and place, and, in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30) nor less than ten (10) days prior to the meeting.

2.6 Owners of Record. For the purpose of determining Owners entitled to notice of a meeting, or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of, or to vote at, the meeting. The Persons or entities appearing in the records of the Association on such record date as the Owners of record of Lots in the Property shall be deemed to be the Owners of record entitled to notice of, and to vote at, the meeting of the Owners.

2.7 Quorum. At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than thirty percent (30%) of the Allocated Interest of the Association shall constitute a quorum for the transaction of

business. If a quorum is not met, the meeting shall be postponed to a date of no more than thirty (30) days and no less than fifteen (15) days at which time the Owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all Owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."

- 2.8 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point in the meeting announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or Person who has been authorized by the Association to accept proxies at the meeting. Proxies may be delivered by electronic transmission and may be digitally signed.
- 2.9 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration, which shall be one vote per Lot. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, or the Act. The election of Board members shall be by secret ballot, but no other vote is required to be by secret ballot. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Lot. Cumulative Voting is not permitted.
- 2.10 Ballots and Action without a Meeting. The Association may utilize written consents to take action without a meeting or mailed ballots consistent with the requirements of the Utah Revised Nonprofit Corporation Act. Any Owner may deliver written consent by electronic transmission. A written consent delivered by electronic transmission is considered to be written, signed and dated for purposes of action without a meeting if the written consent is delivered with information from which the Association can determine that the written consent was sent by the member and the date on which the written consent was transmitted.

- 2.11 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy, (2) the date of the meeting, (3) the identification of any issue that is voted on or decided at the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes, or otherwise comply with this section 2.10, does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be sent to all Owners within thirty (30) days of the annual meeting.

**ARTICLE III
HOMEOWNERS ASSOCIATION BOARD**

3.1 Number, Qualifications, Tenure, and Election.

- (a) **Number of Members.** The Board shall be composed of no less than five (5) Persons and no more than twelve (12) persons meeting the qualifications stated in the Declaration or these Bylaws. The Board may change the number of members between five (5) and twelve (12) by adoption of a Rule in accordance with this Declaration and the Act. However, any changes to the number of Board Members shall be effective only after the next annual meeting and upon the vote of the Members to elect the new Board, whether such Board is larger or smaller than the existing Board. If no Rule is adopted, the number of Board Members shall be seven (7). If the size of the Board is reduced, first any Board members who are up for election at the next annual meeting will step down, and the election will be held to fill any remaining seats. If the size of the Board is reduced such that there are more reductions than Board Members who will finish their two years at the next annual meeting, then the remaining Board Members will draw lots to determine who will be forced to step down at the next annual meeting.
- (b) **Member Requirements/Qualifications.** All candidates for the Board must be a record Owner of a Lot or the spouse of a record Owner of a Lot, or if the Owner is a corporation, trust, partnership, then the candidate must be an officer, partner, trustee, beneficiary or agent of the Owner, and over the age of eighteen (18) years old.
- (c) **Term.** The term of each Board Member shall be two (2) years. The terms of the Board Members shall overlap so that one Board Member shall be elected one year, and one the next, and then one the following, and so on.
- (d) **Nominations.** At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing, and otherwise qualified, Person to serve on the Board. If the Association gives advance notice of any Persons seeking election to the Board, it shall include the names of every Person from whom it has received the written affirmation. If the name of a Person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board Members unless it is submitted with a

written statement signed by the Person indicating that the Person is willing to serve.

- (e) **Disqualification.** If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section or until the Board Member is disqualified, if no such notice is provided.
- (f) **Removal for Failure to Participate.** If any Board Member shall fail to appear at four (4) consecutive regular Board meetings or fifty percent (50%) or more of the regular meetings within any calendar year, after having received proper notice of the meetings, and after the Board has attempted in good faith to schedule meetings consistent with all of the Members' schedules, the other Board Members may by unanimous vote remove that Board Member and appoint a new Board Member.

3.2 Meetings.

- (a) **Regular Meetings.** The Board shall hold regular meetings at least quarterly, and more often at the discretion of the Board.
- (b) **Who Is Entitled to Attend.** All regular meetings shall be open to all Owners. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session.
- (c) **Notice to Owners.** Any Owner may request notice of Board meetings by requesting such notice from either a Board Member or the Manager and providing a valid email address at which the Member will receive notice. Any Owner who has requested notice of Board Meetings shall be given notice along with the Board Members.
- (d) **Owner Comments at Board Meetings.** At each special or regular meeting of the Board, the Board shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Board may select a specific time period during the meeting and limit Owner comments to such a time period. The Board may set a reasonable length of time that each Owner may speak.

- (e) **Special Meetings.** Special meetings of the Board may be called by or at the request of any two (2) Board Members or the President of the Association. Notice of any special meeting shall be given at least forty-eight (48) hours prior thereto to each Board Member. Except for Owners who have requested notice, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears in person at the physical location of the meeting. An Owner who has requested notice of Board Meetings shall receive the same notice as is provided to the Board Members under this section.
- (f) **Quorum and Manner of Acting.** A majority of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present, and for which proper notice was provided to the Board Members, shall be the act of the Board. The Board Members shall act only as a Board and individual members shall have no powers as such.
- (g) **Place and Notice of Meetings.** The Board may designate any place in Salt Lake County as the place of meeting for any regular meeting called by the Board but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Board Members and Owners shall be given at least ten (10) days' notice of regular meetings. Any Owner who has requested notice of Board Meetings shall receive the same notice as Board Members under this Section.
- (h) **Meeting by Electronic Communication.** The Board may also hold any regular or special meeting by means of electronic communication that allows all members to communicate orally in real time including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Board meets by electronic communication, the Board must provide information necessary to allow any Owner who has requested notice of meetings the ability to participate by the available means of electronic communication.
- (i) **Executive Session.**
 - (1) The Board or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Board who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Board.
 - (2) The minutes of the meeting at which an executive session is held shall include:

- i. The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “to discuss the terms of a management contract with XYZ Company,” “to discuss the pending litigation with XYZ” or “to discuss a complaint of a rule violation.”
 - ii. Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as “Decision made regarding attorney-client privileged issue that is recorded in separate and attorney-client privileged minutes of the Executive Session,” and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-Board members only as required by law for the disclosure of attorney-client privileged information.
- (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
- (4) Executive sessions may be held to discuss and make decisions related to the following matters:
- i. Obtaining legal advice on matters including pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including, but not limited to, meetings with the Association’s counsel.
 - ii. Contracts and purchases related to the Association including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases.
 - iii. Association employee and personnel issues including reviews, discipline issues, termination issues, salary issues, and the terms of employment.
 - iv. Discussion of delinquent assessments or fines.
 - v. Discussion of a matter that involves an individual if the discussion is likely to cause the individual undue

embarrassment or violate the individual's reasonable expectation of privacy.

- (5) The Board or the Sub-Committee holding the executive session shall determine who outside of that Board shall be allowed to be present in executive session. No one else is entitled to be present. All Members of the Board shall be entitled to be present at executive sessions of the Board. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

3.3 Informal Action and Action by Board Members without a Meeting.

- (a) Any action required or permitted by this law or the Governing Documents to be taken at a Board's meeting may be taken without a meeting if notice is transmitted in writing by letter or electronic transmission to each Member of the Board and either:
 - (1) Each Board Member consents in writing (i.e. via letter or electronic transmission); or
 - (2) Each Member of the Board, by the time stated in the notice, takes one of the following actions:
 - i. via letter or electronic transmission signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; or
 - ii. via letter or electronic transmission does not demand in writing that the action be taken at a meeting, and
 - (3) The affirmative votes in writing via letter or electronic transmission for the action received by the Association, and not revoked, equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board Members were present and voted; and
 - (4) The Association has not received a written demand via letter or electronic transmission from a Board Member that the action be taken at a meeting.
- (b) Failure to demand that the action be taken at a meeting by the time in the notice shall constitute waiver of the right to demand a meeting.
- (c) The notice for action without a meeting shall state: (i) the action to be taken; (ii) the time by which a Board Member must respond to the notice; (iii) that failure to respond by the time stated in the notice will have the same effect as: (A) abstaining in writing by the time stated in the notice; and (B) failing to demand in writing, by the time stated in the notice, that action not be taken without a meeting; and (iv) any other matters the nonprofit corporation determines to include.

- (d) Action without a meeting, without unanimous consent, shall be effective at the time stated in the notice, unless the notice specifies a different time for voting and for the action to occur.
 - (e) Action by unanimous consent is taken when the last Board Member to consent signs a writing describing the action taken, unless, before that time, any Board Member revokes a previously given consent by sending a writing signed by that Board Member or the secretary or person authorized by the Board to receive the revocation. The Board may choose a different effective date and time.
- 3.4 Compensation. No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a Board Member to the extent such expenses are unanimously approved by the Board.
- 3.5 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.
- 3.6 Vacancies. If vacancies shall occur in the Board by reason of death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.
- 3.7 Board Powers. The Board shall have all power and authority provided in the Declaration, these Bylaws, any other governing documents, and by the Utah Revised Non-Profit Corporations Act.

ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer.
- 4.2 Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be members of the Board during the entire term of their respective offices.

- 4.3 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Member of the Board or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.
- 4.6 The President. The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the Person presiding over a meeting including, but not limited to: (1) the right to control the order of the meeting; (2) the right to arrange for the removal of any disruptive Persons which may include, but not be limited to, any Person who (i) refuses to abide by rules or requests of the presiding Person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order" although the President is not required to use any particular set of rules and procedures; and (4) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without the Board's approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant and the President shall perform other duties as required by the Board.
- 4.7 The Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act. The Vice President shall perform such other duties as required by the Board.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have

authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President's and Vice President's absence, inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.

- 4.9 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as the Bylaws, the Declaration, the law, or any resolution that the Board may require such Person to keep. The Secretary shall also act in the place and stead of the President in the event of the President's, Vice President's and Treasurer's absence, inability or refusal to act. The Secretary shall perform such other duties as required by the Board.
- 4.10 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred as a result of performance of such duties as an officer to the extent such expenses are approved by the Board.
- 4.11 Execution of Instruments. Except as otherwise provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other Person or Persons designated by the Board.

ARTICLE V SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Board may from time-to-time, by resolution, designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any Sub-Committee at any time.
- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time-to-time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board.

- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.
- 5.6 Limitations. A Sub-Committee of the Board may not: (a) authorize distributions; (b) approve or propose to members any action required by this chapter to be approved by members; (c) elect, appoint, or remove a Board Member; (d) amend Articles of Incorporation; or (e) adopt, amend, or repeal Bylaws.

ARTICLE VI INDEMNIFICATION

- 6.1 Indemnification. No Board Member, officer, subordinate officer, agent or member of a Sub-Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, subordinate officer, agent or Sub-Committee member performed for or on behalf of the Association. The Association shall, and does hereby, indemnify and hold harmless each Person who shall serve at any time as a Board Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such Person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such Persons shall become subject, by reason of that Person having, heretofore or hereafter, been a Board Member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board Member, officer, or Sub-Committee member, and shall advance and reimburse any such Person for all legal and other expenses reasonably incurred in connection with any such claim or liability provided that the Association shall have the right, at its sole discretion, to defend such Person from all suits or claims provided further, however, that no such Person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such Person's intentional misconduct. The rights accruing to any Person under the foregoing provisions of this Section shall not exclude any other right to which such Person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such Person in any proper case, even though not specifically provided for herein or otherwise permitted.

- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any Person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any Person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such Person.
- 6.3 Settlement by Association. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII AMENDMENTS

- 7.1 Amendments. Except as permitted specifically herein, or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Lots holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, state of Utah.

ARTICLE VIII WAIVER AND WAIVER OF IRREGULARITIES

- 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions at the meeting, or in the method of accepting or counting votes (which shall not include fraud in counting or the failure to properly count votes) shall be deemed waived under the following circumstances:
- (a) If the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting;
 - (b) If the objecting Person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held;
 - (c) If the objecting Person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it

occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting;

- (d) If the objecting Person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting, or of any decision that was made at the meeting; or
- (e) For any action, vote, or decision that occurred without a meeting, within one hundred twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.

8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Documents or other law that has been violated, and a brief statement of the facts supporting the claimed violation.

8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection: (i) any failure to comply with the provisions of the Declaration and (ii) any failure to obtain the proper number of votes required to pass a particular measure.

8.4 Affirmative Waiver. An Owner may affirmatively waive any notice required by the Declaration, Bylaws or other law. Any waiver specifically described in the Declaration or Bylaws may be accomplished as described therein and any waiver not described in the Declaration or Bylaws shall be made as follows: (i) in writing; (ii) signed by the member entitled to the notice; and (iii) delivered to the nonprofit corporation for: (A) inclusion in the minutes or (B) filing with the corporate records. A waiver may be communicated by electronic transmission.

ARTICLE IX ENFORCEMENT

9.1 Enforcement. The Association and any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. Owners and an Owner's tenants shall be joint and severally liable for any violations of the Governing Documents.

9.2 Enforcement Rights. In addition to any other remedies allowed or provided for in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments; and (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

(a) Discretion in Enforcement.

- (1) Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.

- (2) The Board shall use its reasonable judgment to determine whether to exercise the Association's power to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
 - i. Whether to compromise a claim made by or against the Board or the Association; and
 - ii. Whether to pursue a claim for an unpaid Assessment.
- (3) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith, and without conflict of interest, that under the particular circumstances:
 - i. The Association's legal position does not justify taking further enforcement action;
 - ii. The covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law;
 - iii. That (1) a technical violation has or may have occurred; and (2) the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or
 - iv. It is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (4) Subject to Subsection (5), if the Board decides under Subsection (2)(ii) to forego enforcement, the Association is not prevented from later taking enforcement action.
- (5) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

9.3 No Waiver. Failure by the Association, or by any Owner, to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.

9.4 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel: (1) to enforce any term or condition of any Governing Document or (2) after the Owner communicates or demonstrates an intent not to comply with the Governing Documents, or (3) in any dispute between the Association and an Owner that arises from, or is related to the Owner's status as an Owner or the Owner's ownership in the Project, the Association may, after notice to the Owner that attorneys' fees and costs may be imposed or assessed, assess all reasonable attorneys' fees and costs

associated with such enforcement or dispute to the Owner, regardless of whether a lawsuit is initiated or not.

- (b) **Costs.** The term “costs” as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, lien and recording costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) **Exception to Owner’s Liability for Fees and Costs.** If, related to (1) any dispute with an Owner, (2) any challenge by an Owner to a position of the Association on a Term and Condition, or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (i) the Association could not establish an initial position on without having incurred the fees and costs, or (ii) results in a substantial modification to a prior position taken by the Association; then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

ARTICLE X DOCUMENTS

- 10.1 **Availability of Documents.** The Association may make available to the Owners, Lenders, and insurers of any lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days, or such other legally required timeline, if requested by an Owner, after receiving a proper request, during normal business hours. The Association shall have the right to refuse to disclose information that the Board determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social-security numbers. The Association may require that the Owner comply with any statutory provision related to the request of records from the Association.

That the foregoing Amended and Restated Bylaws were duly adopted at a meeting of the Homeowners Association held on the 28 day of January, 2016, by at least sixty-seven percent (67%) of the total voting interests of the Homeowners Association and were approved by the Declarant.

ROSECREST VILLAGE HOMEOWNERS
ASSOCIATION, INC., a Utah nonprofit
corporation

By: Terry E. Christolm

Name: Terry Christolm

Its: HOA President

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 26 day of
February, 2016, by Terry Christolm, as the
HOA President of ROSECREST VILLAGE HOMEOWNERS
ASSOCIATION, INC., a Utah nonprofit corporation.

Nicole McIntosh
Notary Public

