

**FIRST AMENDMENT TO  
 DECLARATION OF  
 72ND STREET TOWN HOMES  
 A Planned Unit Development**

THIS FIRST AMENDMENT TO DECLARATION OF 72ND STREET TOWN HOMES is made and executed this \_\_\_ day of February, 2006, by BRAD REYNOLDS CONSTRUCTION, INC., a Utah limited liability company ("Reynolds"), with its principal place of business located in Salt Lake City, State of Utah, (hereinafter referred to as "Declarant").

RECITALS:

A. On the 26th day of April, 2005, DBC Enterprises, LLC, a Utah limited liability company, made and executed that certain "Declaration of Covenants, Conditions and Restrictions" for 72<sup>nd</sup> Street Town Homes, A Planned Unit Development, with respect to the certain real property located in Midvale, Salt Lake County, State of Utah, more particularly described on Exhibit "A" attached hereto (herein the "Declaration"), which Declaration was recorded in the office of the County Recorder of Salt Lake County, State of Utah, on the 11th day of May, 2005, as Entry No. 9374661, in Book 9129, beginning at Page 9364.

B. Reynolds is the owner of all thirty-two (32) lots located upon the real property covered by the Declaration.

C. Reynolds desires to amend certain provisions of the Declaration by the filing of this Amendment.

NOW, THEREFORE, in consideration of the recitals set forth herein above, the Reynolds hereby declares and certifies as follows:

1. Article III, Section 1. Article III, Section 1 is deleted in its entirety with the following substituted in place thereof:

1. Description of Improvements. The significant improvements in the Project include, or shall include, Thirty-Two (32) Dwelling Units constructed with cement footings and foundations, stucco and/or cobblestone rock exteriors, and wood, composite asphalt shingles on the roof; and Common Area consisting of Fourteen (14) open parking spaces, green space, landscaping, roadways, a common utility system, as well as an entrance to and exit from the Community, as well as Limited Common Area driveways. The Project will also contain other improvements of a less significant nature. All Dwelling Units and residential structures must be of like kind and quality (in the sole discretion of Declarant or its successor in interest (including Reynolds)) with a minimum of 580 square feet on the main floor.

2. Article III, Section 5, Subsection (f) Addition. Subsection (f) is added to Section 5, Article III, as follows:

(f) Party Wall Provisions.

(1) General Rules of Law to Apply. Each wall which comprises a portion of a Dwelling Unit and which is built as a part of the original construction upon the Property and placed on the dividing line between any Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 5 (f), the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(2) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(3) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(4) Weatherproofing. Notwithstanding any other provision of this Section 5 (f), an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(5) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 5 (f) shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(6) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5 (f), unless the parties can agree upon one arbitrator whose decision shall be binding, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

3. Article III, Section 7. Article III, Section 7 is modified by the addition of Subparagraph c, as follows:

c) Notwithstanding the provisions of a) and b) above, no easement as provided in a) and/or b) shall exist through a Dwelling Unit as constructed upon a Lot by Declarant.

4. Article III, Section 16, Subparagraph b. Article III, Section 16, Subparagraph b, is deleted in its entirety with the following substituted in place thereof:

b) Class B. Class B Member 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. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A Membership upon the happening of the earlier of the following (which is hereinafter referred to as the "Event" or "Events"):

(1) Lots Sold. Four (4) months after seventy-five percent (75%) of the Units (constructed upon the Lots) have been sold; or

(2) Four Years. Four (4) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines. From and after the happening of these events, whichever occurs earlier, 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.

5. Article III, Section 19, Subparagraph a. Article III, Section 19, Subparagraph a, is deleted in its entirety with the following substituted in place thereof:

a) Area of Common Responsibility. Except as may be designated upon the Plat to the contrary, the Association shall maintain, repair and replace, as needed from time to

time, the Common Areas, Limited Common Areas, and certain Improvements constructed or installed thereon and in, on or about the Lots, including but not limited to all entrances to and exits from the Project, streets, roads, the five open parking spaces, street lighting, common sidewalks, curbs and gutters, landscaping, green space and sprinkler systems, central utility systems for power, light and water, and all grass edging and mowing as well as the preparation, maintenance and planting of all flower beds (both front and back yards). The foregoing items are hereinafter referred to as the "Area of Common Responsibility". As set forth on the Plat, and except for ice and snow removal which the Association shall be responsible for as provided in Section 19(c) below, driveways and walks, even though designated as Limited Common Areas, shall be maintained by Owners of the Lots to which such Limited Common Areas are appurtenant.

6. Article III, Section 19, Subparagraph b. Article III, Section 19, Subparagraph b, is deleted in its entirety with the following substituted in place thereof:

b) Landscaping Restrictions. Lot Owners shall not modify the landscaping, green space, sod, plant and flower beds, sprinkling system, or drainage in, on or about the Common Areas without the prior written consent of the Management Committee, except that Lot Owners shall have the right to plant flowers in approved and planned flower beds located between the rear of a Living Unit and a five (5) foot privacy fence installed with the approval of the Management Committee. Such area shall be properly maintained as required by the Management Committee. If, in the opinion of the Management Committee, a resident has created a vegetable garden area but has ceased to use the area for its intended purpose or to properly maintain it, the area shall be restored to its original condition.

7. Article III, Section 19, Subparagraph f. Article III, Section 19, Subparagraph f, is deleted in its entirety with the following substituted in place thereof:

f) Utilities. If utility services are not directly available to individual Owners, the Association may obtain the same and bill them to the individual Owners on such basis as the Association shall determine is equitable.

8. Article III, Section 20, Subparagraph n. Article III, Section 20, Subparagraph n, is deleted in its entirety with the following substituted in place thereof:

n) Termination of Utility Service. At the discretion of the Management Committee, and after compliance with the requirements of Section 32 of this Article III, the utility service to any Owner paid for by Assessments may be terminated if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

9. Article III, Section 28, Subparagraphs a, b and c. Article III, Section 28, Subparagraphs a, b and c are deleted in their entirety with the following substituted in place thereof:

28. Destruction, Condemnation and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation or obsolescence of the Project, exclusive of the destruction, condemnation or obsolescence of one or more Dwelling Units.

a) Definitions. Each of the following terms shall have the meaning indicated.

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, exclusive of Dwelling Units, the excess of the estimated cost of restoration over the funds available is twenty-five percent (25%) or more of the estimated value of the Project, determined exclusive of Dwelling Units.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof, exclusive of Dwelling Units.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the project, exclusive of Dwelling Units, has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the

excess of the estimated cost of restoration over the funds available is twenty-five percent (25%) or more of the estimated restored value of the Project, exclusive of Dwelling Units.

(4) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof, exclusive of Dwelling Units, has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty-five percent (25%) or more of the estimated restored value of the Project, exclusive of Dwelling Units.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of the Project, exclusive of Dwelling Units, after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project, exclusive of Dwelling Units, to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payment in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

b) Determination by Management Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, exclusive of damages to any Dwelling Unit, or upon a complete or partial taking of the Project, exclusive of one or more Dwelling Units, under eminent domain or by grant or conveyance in lieu thereof, the Management Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project, exclusive of Dwelling Units. In addition, the Management Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations, the Management Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project (exclusive of any Dwelling Units) shall be undertaken by the Management Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding mortgages on Lots which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to mortgages held by Eligible Mortgagees.

10. Article III, Section 35. Article III, Section 35, is deleted in its entirety with the following substituted in place thereof:

35. Declarant's Rights Assignable. All of the rights of Declarant under this Document may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Reynolds deems itself to be the successor Declarant. Any mortgage covering all Lots, Units or Buildings in the Project, title to which is vested in Declarant, shall, at any given point in time and whether or not such mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused

rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

11. Article III, Section 36. Article III, Section 36, is deleted in its entirety with the following substituted in place thereof:

36. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to \$600.00, which amount can be amended from time to time, in Declarant's sole discretion. Each Lot's share of the working capital fund (\$18.75, unless amended by Declarant) shall be collected either at the time the sale of any Lot is closed or when control of the Project is transferred to the Lot Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Lot Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Lot is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Lot's share of the working capital fund by using funds collected at closing when the Lot is sold.

12. Article III, Section 45. Article III, Section 45, is deleted in its entirety with the following substituted in place thereof:

45. Agent for Service of Process. After the occurrence of the Events, the President of the Association shall be the person designated as the agent to receive service of process. The initial Registered Agent shall be Brad Reynolds, and the initial office of the Registered Agent shall be 4804 South 1140 East, Salt Lake City, Utah 84117.

13. Lender's Agreement of Subordination. By its execution of this Amendment to Declaration, First Utah Bank (hereinafter "Subordinate Lender"), agrees, covenants and declares that the Declaration, as amended, shall be senior in priority to the Deed of Trust made as of August 10, 2005, between BRAD REYNOLDS CONSTRUCTION, INC., as "Trustor," and FIRST UTAH BANK, as "Trustee" and "Beneficiary" (hereinafter "Trust Deed"), which Trust Deed was recorded on August 19, 2005, as Entry No. 9467008, in Book 9175, beginning at Page 6601, of the Official Records of the Salt Lake County Recorder.

14. Effective Date. This Amendment to Declaration shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

BRAD REYNOLDS CONSTRUCTION, INC., a  
Utah limited liability company

By: \_\_\_\_\_

Brad Reynolds  
President

SUBORDINATE LENDER:

FIRST UTAH BANK, a Utah Corporation

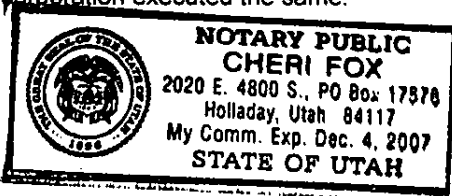
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Nathan D. Anderson*  
Vice President

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

On the 27<sup>th</sup> day of February, 2006, personally appeared before me Brad Reynolds, who being by me duly sworn, did say that he is the President of BRAD REYNOLDS CONSTRUCTION, INC., a Utah corporation, and that the foregoing Amendment to Declaration was signed on behalf of said corporation by authority of the bylaws or a resolution of its officers, and the said Brad Reynolds acknowledged to me that said corporation executed the same.



*Cheri Fox*  
\_\_\_\_\_  
NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2006, by Nathan A. Anderson the Vice President of UTAH FIRST BANK, a Utah corporation.

*Nadine K. Geist*  
\_\_\_\_\_  
NOTARY PUBLIC

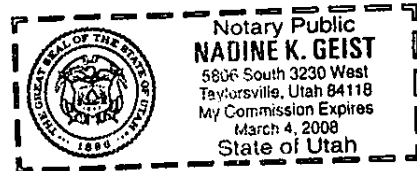


Exhibit "A"  
to  
First Amendment to Declaration of  
72ND STREET TOWN HOMES

All of Lots 1 through 32, inclusive, contained within 72<sup>ND</sup> STREET TOWN HOMES, as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah, on May 11, 2005, as Entry No. 9374660, in Book 2005P of Plats, at Page 152 (as said Map may have heretofore been amended and/or supplemented), and in the Declaration of Covenants, Conditions and Restrictions of 72<sup>ND</sup> STREET TOWN HOMES recorded in Salt Lake County on May 11, 2005, as Entry No. 9374661, in Book 9129, at Page 9364 (as said Declaration may have heretofore been amended and/or supplemented). TOGETHER WITH the undivided percentage of ownership in and to the projects Common Areas and Facilities and Homeowners Association as defined and provided for in said Map and Declaration. ALSO, TOGETHER WITH the rights of ingress and egress over and across the Private Street known as 421 East Street located within said Project.

Lot 1 Tax Parcel No:	22-30-204-024
Lot 2 Tax Parcel No:	22-30-204-025
Lot 3 Tax Parcel No:	22-30-204-026
Lot 4 Tax Parcel No:	22-30-204-027
Lot 5 Tax Parcel No:	22-30-204-028
Lot 6 Tax Parcel No:	22-30-204-029
Lot 7 Tax Parcel No:	22-30-204-030
Lot 8 Tax Parcel No:	22-30-204-031
Lot 9 Tax Parcel No:	22-30-204-032
Lot 10 Tax Parcel No:	22-30-204-033
Lot 11 Tax Parcel No:	22-30-204-034
Lot 12 Tax Parcel No:	22-30-204-035
Lot 13 Tax Parcel No:	22-30-204-036
Lot 14 Tax Parcel No:	22-30-204-037
Lot 15 Tax Parcel No:	22-30-204-038
Lot 16 Tax Parcel No:	22-30-204-039
Lot 17 Tax Parcel No:	22-30-204-055
Lot 18 Tax Parcel No:	22-30-204-054
Lot 19 Tax Parcel No:	22-30-204-053
Lot 20 Tax Parcel No:	22-30-204-052
Lot 21 Tax Parcel No:	22-30-204-051
Lot 22 Tax Parcel No:	22-30-204-050
Lot 23 Tax Parcel No:	22-30-204-049
Lot 24 Tax Parcel No:	22-30-204-048
Lot 25 Tax Parcel No:	22-30-204-047
Lot 26 Tax Parcel No:	22-30-204-046
Lot 27 Tax Parcel No:	22-30-204-045
Lot 28 Tax Parcel No:	22-30-204-044
Lot 29 Tax Parcel No:	22-30-204-043
Lot 30 Tax Parcel No:	22-30-204-042
Lot 31 Tax Parcel No:	22-30-204-041
Lot 32 Tax Parcel No:	22-30-204-040