

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
Devonshire Downs Planned Unit Development  
(A Deminimis Planned Unit Development)

**THIS DECLARATION**, made on the date hereinafter set forth by Devonshire Court Condominiums, a Utah General Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

**WHEREAS**, Declarant is the owner of certain property in North Logan, County of Cache, State of Utah, which is more particularly described as:

See Exhibit "A" attached hereto and incorporated herein by this reference.

**WHEREAS**, Declarant Filed a plat in the Recorder's Office of Cache County, Utah, as Filing No. 628543 on October 23, 1995 as Devonshire Court Planned Unit Development Phase 4 (Revised) on said real property; and

**WHEREAS**, Declarant establishes the Planned Unit Development as a Deminimis Planned Unit Development inasmuch as there are no amenities in the Common Area, the fees and Assessments are anticipated to remain very low, and the Common Area has been kept to a minimum so far as maintenance fees and costs are concerned and it is not contemplated that the Common Area has a significant influence on the enjoyment of the property and has minimal effect upon the value of any Lot.

**NOW THEREFORE**, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ENT 643942 Bk. 708 Pg. 568  
DATE 17-JUL-1996 4:14PM FEE 62.00  
MICHAEL L GLEED, RECORDER - FILED BY JH  
CACHE COUNTY, UTAH  
FOR NORTHERN TITLE COMPANY

**ARTICLE I**  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Devonshire Downs Homeowner's Association, to be organized as a Utah nonprofit corporation or a limited liability company, its successors and assigns, which shall be the Association of the "Owners" in which the governance of the Properties, enforcement of this Declaration, and title to the "Common Areas" shall be vested. Each Lot Owner shall own a 1/24th interest (4.16%) in the Association, absent annexation of additional property. The Association shall be managed and governed by a board of

directors ("Board") elected by the Lot Owner's as defined and detailed in the Bylaws of Devonshire Downs Home Owners Association ("Bylaws") attached hereto as Exhibit D and incorporated herein by this reference.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation. Each Owner is an Association member and holds an undivided 1/24th interest (4.16%) in the Association and the Common Area which is owned by the Association.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements) thereto owned by the Association for the common use and enjoyment of the Owners, including private roads, and specifically including 1530 North Street and 360 East Street. The Association shall designate an area within sixteen feet (16') of the rear of the building and or Lot as a Private Common Area for the exclusive use of the Lot Owner as provided in Article II, Section 4. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is as shown on the recorded plat and is further described as follows:

See Exhibit "B" (Devonshire Court Planned Unit Development Phase 4 (revised) attached hereto and incorporated herein by this reference.

The Common Area consists of all property except that upon which dwelling units, driveways, and garages exist. Each Lot Owner shall have an undivided 1/24th interest (4.16%) in the Association and the Common Area owned by the Association absent annexation of additional property.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded planned development plat of the Properties, with the exception of the Common Area, designated as A/a, B/b, C/c, and D/d on the Plat, together with and subject to easements as provided.

Section 6. "Dwelling Unit" shall mean and refer to the portion of the building which is arranged, occupied, or intended to be occupied as living quarters with sanitary, sleeping, and food preparation facilities. Each unit shall be occupied by the Owner, his family, guests or tenants as a single family residence and for no other purpose. A family is further defined as any number of individuals related by blood, marriage or adoption or up to and including three (3) unrelated individuals.

Section 7. "Declarant" shall mean and refer to Devonshire Court Condominiums, a Utah General Partnership, and its successors and assigns, if such successors and assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Board" shall mean and refer to the Association's board of directors which shall manage and govern the Association and said Board members shall be elected by the Lot Owner's as defined and more specifically detailed in the attached Bylaws.

Section 9. "Bylaws" shall mean and refer to the bylaws of the Devonshire Downs Home Owners Association attached hereto as Exhibit D and incorporated herein by this reference.

Section 10. "Assessments" shall mean and refer to any and all costs and fees whether individual or cumulative for Association reimbursement or payment necessary to provide for the operation, care, upkeep, replacement, maintenance and surveillance of the Common Area and services of the Planned Unit Development through utility Assessments, exterior maintenance Assessments and annual Assessments or special Assessments.

## ARTICLE II PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area and shall have an undivided 1/24th interest (4.16%) in the Association and Common Area owned by the Association and a reasonable easement across the Common Area for ingress and egress to each Lot, which easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association through the Board to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to charge those having easement rights on 1530 North Street and 360 East Street to pay an equitable sum for maintenance and snow removal charges through Assessments and to establish uniform and reasonable rules and regulations pertaining to the use of the Common Area.
- (b) The right of the Association through the Board to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association through the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) each class of members has been recorded, and it must be subject to the Owners' easements for ingress and egress.

- (d) The right of the Association through the Board to contract with adjacent property owners or others to grant certain rights of use of the recreational facilities on reasonable terms and conditions, which the Board deems is in the Association's and the Owners' best interests.
- (e) In any instance in which a portion of a Dwelling Unit is contained within the described area of a different Lot, the Dwelling Unit Owner shall have an exclusive and sole right of occupancy, an exclusive and sole easement for use as additional living space and shall have the sole obligation of maintenance and upkeep of the interior of that entire Dwelling Unit. Each conveyance of a Lot shall be subject to and together with these specific easement and maintenance rights and obligations as appropriate.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, as more fully defined at Article I and Section 6 herein, his tenants, or contract purchasers who reside on the property.

Section 3. PARKING. Each Lot shall entitle the Owner to the use of two (2) automobile parking spaces whether inside a garage or outside a garage. All Lots to have at least one (1) parking space inside a garage.

Section 4. PRIVATE COMMON AREA. In the event the Association through the Board designates private common area ("Private Common Area"), it must be provided for all Lot Owners and any use of the so designated Private Common Area is subject to all the provisions of this Declaration. The Rear Private Common Area may be fenced by a Lot Owner if approved by the Board as provided in Article V, Section 1, and if approved, the fence shall be installed and maintained by the Lot Owner with no change in Association Assessments.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot which is subject to Assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. The Association shall have two classes of voting membership:

- Class A.** Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be

exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1999.

#### **ARTICLE IV** **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual Assessments or charges,
- (b) special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and
- (c) Assessments for utilities as provided in Article VI. The annual, special, and utility Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. PURPOSE OF ASSESSMENTS.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and other improvements situated upon the Properties. Neither annual nor special Assessments may be used for the construction of capital improvements during the development period.

**Section 3. MAXIMUM ANNUAL ASSESSMENT.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment, excepting utility Assessments, shall not exceed \$1,000 per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment may be increased each year not more than five percent (5%) above the maximum Assessment for the previous year unless a vote of the membership approves a greater increase as provided in Section 3(b)
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board may fix the annual Assessment at an amount not in excess of the maximum figure provided in Section 3(a).

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual Assessments, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected by the Board on a monthly or other periodic basis. In the event there are undeveloped Lots, the Owner's of the undeveloped Lots may be Assessed at ten percent (10%) of the amount of the developed Lot Assessment rate based upon Association duties and expenses which do benefit such Lots, provided the financial stability of the Association will not be jeopardized, in which event the the undeveloped Lot Assessment rate and percentage may be increased.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual Assessments shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Homeowners' Association. The first annual Assessment

shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Board setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Board as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum unless a different interest rate is established by the Board. The Association may bring an action at law against the Owner personally obligated to pay the sum, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Area or abandonment of his Lot.

**Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **ARTICLE V** **ARCHITECTURAL CONTROL AND USE RESTRICTIONS**

**Section 1. ARCHITECTURAL CONTROL.** No building, fence, wall or other structure, television, radio or other electronic antenna or satellite dish shall be commenced, erected, maintained, repaired or replaced or landscaping provided upon the Properties nor shall any interior or exterior structural addition to or change or alteration whether permanent or temporary therein be made until the plans and specifications showing the nature, kind, shape, color, texture, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an architectural committee composed of three (3) or more representatives appointed by the Board ("Architectural Committee"). In the event said Board, or the Architectural Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

**Section 2. USE RESTRICTION.** No part of the Properties shall be used for any

commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes. Other prohibited uses, which may be expanded or retracted by the Board or the Architectural Committee from time to time include, but are not limited to exterior clotheslines, wind chimes or other hanging decorative items, plastic, sun screen or other reflective type material applied to the interior or exterior of any window. Window coverings not containing a white or off white backing visible from outside the Lot must be approved by the Board or Architectural Committee prior to installation.

**Section 3. PROHIBITED AND OFFENSIVE ACTIVITIES.** No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Properties nor shall anything be done thereon that shall in any way interfere with the quiet enjoyment of other Owners or which in any way increase the rate of insurance or which will impair the structural integrity of the building.

**Section 4. BUILDING CONDITIONS.** All Lots which are contained in the same building must maintain and keep the same existing color on the exterior, including walls, doors and roofs (shingles), and such color shall be kept uniform as to each building and in a desirable and attractive condition except upon the written agreement to do otherwise signed by the Board or the Architectural Committee. Each Lot shall be maintained in good repair at all times and in a desirable and attractive condition.

## **ARTICLE VI** **UTILITY SERVICE AND UTILITY ASSESSMENTS**

**Section 1. EASEMENTS.** All Owners are given mutual easements across the Lots and Common Areas for purposes of reasonable installation, repair, maintenance and replacement of common water and sewer lines for each Dwelling Unit, and cable television and other utilities such as electricity gas, and telephone. The Association will provide maintenance for such lines in all Common Areas, but each Owner will provide such maintenance within each Lot. Costs of repair shall be shared by Owners on lines servicing more than one (1) Lot, but when servicing only one (1) Lot, the repair shall be the responsibility of the Lot Owner being served.

**Section 2. UTILITY ASSESSMENTS.** Water and sewer utilities are metered on a building/development basis and will be prorated among owners of improved Lots as equitably determined by the Board. The Board may develop reasonable rules and procedures governing advance payment of utility costs, and reasonable deposits comparable to those required by local cities and utility companies, based on estimates, past costs, projected costs or otherwise, and also governing interest charges on delinquent accounts, utility shut-off procedures and collection procedures for nonpayment. At least fifteen (15) days advance written notice to an Owner whose utility Assessment is not current may be given, requiring the Owner to either pay all utility Assessments or upon failure to do so within the fifteen (15) day period permitting the Association to shut-off water or other utility services until all Assessments are paid in full. Reasonable reserves may be established for anticipated rate/use increases, bad debts and other



projected costs or losses. Such fees for utility service shall not be comingled with other Association funds.

## **ARTICLE VII** **PARTY WALLS**

**Section 1. GENERAL RULES OF LAW TO APPLY.** Each wall which is built as a part of the original construction of the Dwelling Units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 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.

**Section 3. DESTRUCTION BY FIRE OR OTHER CASUALTY.** If a party wall is destroyed or damaged by fire or other casualty, 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.

**Section 4. WEATHERPROOFING.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. RIGHT TO CONTRIBUTION RUNS WITH LAND.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

## **ARTICLE VIII** **EXTERIOR MAINTENANCE**

In the event an Owner shall fail to maintain the Lot, rear Private Common Area, and the improvements situated thereon in a manner satisfactory to the Board or Association, the Board, after approval by two-thirds (2/3) vote of the Association, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the Assessment to which such Lot is subject.

**ARTICLE IX**  
**GENERAL PROVISIONS**

Section 1. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred, or kept on the Properties, except two (2) dogs, or two (2) cats, but not both, or other common household pets not to exceed a total of two (2), may be kept indoors but not outdoors, except in any approved "private" common area, and further provided the common area is fenced and accessible only to the Lot. If a pet, approved under this Section, becomes a nuisance to other Owners, that pet shall no longer be approved under this Section and the Owner shall remove the offending pet from the Properties upon written notice from the Board or its representative.

Section 2. REFUSE. Each Owner shall provide garbage and refuse containers and receptacles and shall see that each Lot is kept in clean and sanitary condition. Refuse shall be kept in receptacles and regularly placed for pick-up by public sanitation services. Refuse containers shall not be left in public view or upon the Common Area beyond the day of pickup.

Section 3. ENFORCEMENT. The Board, the Association, or any Owner, shall have standing to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board, the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. BOATS AND TRAILERS. No boat, trailer, or RV shall be parked on any road or parking space in excess of seven (7) days. Such vehicles may be kept in garages but otherwise must be stored and parked off the Properties except as specifically permitted.

Section 5. SEVERABILITY. Invalidation of any one of these covenants or restrictions by Judgment or court order shall in no wise affect any other provisions of this Declaration which shall remain in full force and effect. The covenants and restrictions by judgment or court order shall in no wise affect any other provisions of this Declaration which shall remain in full force and effect.

Section 6. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during; the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 7. ANNEXATION.

(a) Annexation with Approval of Members. Additional residential property and

Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Association members; or

- (b) Annexation Without Approval of Members or Association and Pursuant to General Plan. Any real property may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without approval, assent, or vote of the Association or its members, providing and on condition that:
- i) Prior to the conveyance of title to any real property or any improved lots within real property to be annexed to individual purchasers, thereof, fee simple title or right-of-way to the common area within said real property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, covenants, conditions, and restrictions then of record, including those set forth in this Declaration.
  - ii) A Supplementary Declaration of Covenants, Conditions, and Restrictions, as described hereinafter in this Section, covering said real property described on Exhibit "C", shall be executed and recorded by the owner of said real property, or its successors and assigns. Annexations must take place under this Section on or before ten (10) years after the date of recording of this declaration. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described herein making said property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in said real property shall automatically be members of the Association.
  - iii) Determination of FHA and/or VA and/or HUD, if required by some or all, that the annexation is in accord with the general plan previously approved by them or to subsequently be approved by them.
  - iv) Any property annexed may include a Supplementary Declaration of Restrictions applicable exclusively to that area annexed.
- (c) Supplementary Declarations. The additions authorized under the foregoing Section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such Supplementary Declaration contemplated above may contain such complementary additions and modifications to the covenants, conditions, and

restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration. In no event however shall any such Supplementary Declaration, merger, or consolidation revoke, modify, or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Board, and thereafter all of the Owners of Lots in said real property shall automatically be members of the Association.

**Section 8. FHA/HUD APPROVAL.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration or Department of Housing and Urban Development:

- (a) Annexation of additional properties, except as permitted in Article IX, Section 7b, dedication of Common Area, and
- (b) amendment of this Declaration of Covenants, Conditions and Restrictions.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereto set their hands and seal this 12th day of July, 1996.

**DEVONSHIRE COURT CONDOMINIUM PARTNERSHIP**

By: 

Dell Loy Hansen, a General Partner

By: 

Paul Willie, a General Partner

PARTNERSHIP ACKNOWLEDGMENT

State of UTAH )  
 : ss  
County of CACHE )

This certifies that on this 12 day of July, 1996 personally appeared before me the undersigned, A Notary Public in and for said County and State, the within named DELLAY HANSEN and PAUL WILLIE known to me to be the persons named in and who executed the foregoing instrument and who are known to me to be members of the partnership of DEJONSURE COURT CONDOMINIUM PARTNERSHIP acknowledged to me that they executed said instrument freely and voluntarily for the purposes and uses herein mentioned, on behalf of said partnership.

IN TESTIMONY WHEREOF, I have hereto set my hand and notarial seal the day and year last above written.

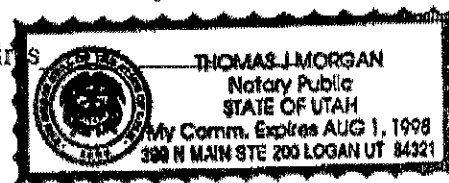
Before me:

By Thomas J Morgan

Residing at WELLSVILLE, UT

Notary Public in and for the State of Utah

My Commission expires



## Exhibit A

Devonshire Downs Planned Unit Development also known as Devonshire Court Planned Unit Development Phase 4 (Revised), more particularly described as follows:

Beginning at a point in the west bank of the Logan-Hyde Park Canal, said point being East 1087.32 feet from the accepted SW corner of Lot 8, Block 8, Plat "D", Logan Farm Survey, situated in the SW Quarter of Section 22, Township 12 North, Range 1 East, S.L.B. and M., and running thence northeasterly, along said west bank of the canal, the following five courses: North 26°43'17" East 73.52 feet; North 17°41'15" East 49.35 feet; North 7°13'52" East 125.49 feet; North 17°45'27" East 36.26 Feet; North 28°30'56" East 67.46 Feet; Thence West 318.01 feet, thence South 136 feet, thence West 8.42 feet, thence South 194.98 feet, thence East 219.32 feet to the point of beginning, containing 2.03 acres more or less.

## Exhibit B

All Common Area in Devonshire Court Planned Unit Development Phase 4 (Revised) as shown by the Official County Plat filed October 23, 1995 as filing number 628543 in the Office of the Recorder of Cache County, Utah.

Each Lot shall own an undivided 1/24th interest (4.16%) in the Association and Common Area shown on said plat absent annexation of additional property.

## EXHIBIT C

Beginning at a point in the proposed East right of way line of 200 East Street, said point being East 33 feet from the accepted Southwest Corner of lot 8, Block 8, Plat "D" Logan Farm Survey, situate in the Southwest Quarter of Section 22, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, and running thence North 90°00'00" East 1054.32 feet to the West bank of the Logan-Hyde Park Canal, thence Northeasterly along the said West bank the following five courses: North 26°43'17" East 73.52 feet; North 17°41'13" East 49.35 feet; North 7°13'52" East 125.49 feet; North 17°45'27" East 36.26 feet; North 23°30'56" East 67.46 feet; thence South 90°00'00" West 1161.43 feet to said proposed East right of way line of 200 East Street; thence South 0°00'00" West 330.98 feet (330 feet by record) along said right of way line to the point of beginning.



EXHIBIT D

**BYLAWS OF DEVONSHIRE DOWNS  
HOMEOWNERS ASSOCIATION**

I. IDENTITY

These are the Bylaws of Devonshire Downs Home Owners Association, a Planned Unit Development ("Devonshire Downs"), duly made and provided for in accordance with the Utah Condominium Ownership Act (the "Act"). Any term used herein which is defined in the Declaration to which these Bylaws are appended shall have the meaning ascribed therein.

II. OFFICE

The office of the Association shall be located at the Planned Unit Development or at such other place as may be designated by the Board.

III. APPLICATION

All present or future Owners, tenants, or any other persons who might use the facilities of Devonshire Downs in any manner are subject to the regulations set forth in these Bylaws. The mere acquisition or rental of any of the Lots or parts thereof, or the mere act of occupancy or use of any of said Lots or parts thereof or the Common Areas will signify that these Bylaws are accepted, ratified, and will be complied with by said persons.

V. ASSOCIATION

1. Members. The members of the Association shall consist of all persons owning a Lot of Devonshire Downs, in fee simple as shown in the records of the County Recorder of Cache County, Utah. No mortgagee or a beneficiary or trustee under a deed of trust shall be a member unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The interest of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the member's Lot.

2. Place of Meetings. Meetings of the Association shall be held at such place within the State of Utah as the Board may specify in the notice, except as herein otherwise specified.

3. Annual Meetings. The first annual meeting of the Association shall be held at 8:00 p.m. on the first Wednesday in October, 1996. Thereafter, the annual meetings shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Board may by resolution fix the date of the annual meeting on such date or at such other place as the Board may deem appropriate.

4. Special Meetings. Special meetings of the Association may be called at any time by the Board or by Lot Owners who collectively hold at least thirty (30) percent of the total vote which vote count is outlined more fully at Article III of the Declaration. Such meeting shall be held at such place as the Board may specify and the notice thereof shall state the date, time and matters to be considered.

5. Notices. Written or printed notice stating the place, day and hour of all meetings of the Association and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail to each Lot Owner. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

6. Quorum. At the meeting of the Association, the Owners of more than fifty (50%) percent in the aggregate of interest in the undivided ownership of the Common Area shall constitute a quorum for any and all purposes, except where express provisions of these Bylaws or the Declaration require a vote of more than fifty (50%) percent of the Association, in which event a quorum shall be the percentage of interest required for such vote and the vote count will always be consistent with Article III of the Declaration irregardless of percentage ownership of the Common Area. In the absence of a quorum, the President may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

7. Voting. When a quorum is present at any meeting, the vote of the Lot Owners representing more than fifty (50%) percent of the undivided interest present at the meeting either in person or represented by proxy, from which the vote count is outlined more fully at Article III of the Declaration, shall decide any question of business brought before such meeting, including the election of the Board, unless the question is one upon which, by express provision of the Declaration or these Bylaws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the secretary at least five (5) days prior to said annual meeting. Proxies for special Lot Owners' meetings must be of record with the Secretary at least two (2) days prior to said special meeting. An Owner shall be deemed to be in good standing and entitled to vote at

any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all due installments of Assessments made or levied against him and his Lot by the Board as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Lot, at least three (3) days prior to the date fixed for such annual or special meeting.

8. Proxies. The vote, which count is outlined more fully at Article III of the Declaration, appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or, in cases where the Lot Owner is more than one person, by or on behalf of all such persons, but in no event shall more than one (1) vote be cast with respect to any Lot. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Lot Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than three (3) days before the meeting.

9. Waivers of Notice. Any Lot Owner may at any time waive any notice required to be given under these Bylaws, or by statute or otherwise. The presence of a Lot Owner in person at any Association meeting shall be deemed such waiver.

10. Conduct of Meeting. The President, or in his absence the Vice-President shall preside over all meetings of the Board and Association and the Secretary shall keep the minutes of both the Board meetings and the Association meetings and record in a Minute Book all resolutions adopted by the meetings as well as maintain a record of all transactions occurring thereat.

## V. BOARD OF DIRECTORS

1. Purposes and Powers. The business, Properties and affairs of the Planned Unit Development shall be managed and governed by the Board consisting of the number of members as shall be determined by the Bylaws and Declaration, but not less than three (3) members. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or by these Bylaws directed to be exercised and done by the Association. The Board shall have the power from time to time to adopt any rules and regulations deemed necessary for the enjoyments of the Planned Unit Development provided such rules and regulations shall not be in conflict with the Act, the Declaration or these Bylaws. The President shall have the authority to act on behalf of the Board and the Association on all matters relating to the duties of the Manager, if any, which might arise at meetings of the Association or meetings of the Board. Subject to any limitations provisions contained in the

Declaration, the Board shall be responsible for the following:

- (a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the common expenses Assessments;
- (b) Making Assessments against Owners to defray the costs and expenses of the Common Areas, Properties, utilities and as applicable any particular Lot(s) or Dwelling Units, establishing the means and methods of collecting such Assessments from the Owners, and establishing the period of the installment payment of the annual Assessment for common expenses. Unless otherwise determined by the Board, the annual Assessment against each Owner for his proportionate share of the Association common expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.
- (c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the Common Areas and services of the Planned Unit Development.
- (d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Areas, and providing services for the Properties and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.
- (e) Collecting the Assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Properties.
- (f) Making and amending rules and regulations respecting the use of the Properties.
- (g) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Properties and repairs to, and restoration of, the Properties, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.
- (i) Enforcing by legal means the provisions of the Declaration, the Bylaws and rules and regulations for the use of the Properties adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

- (j) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.
- (k) Paying the cost of all services rendered to the Planned Unit Development and not billed to Owners of individual Lots.
- (l) Keeping books with detailed accounts of the receipts and expenditures affecting the Properties, and the administration of the Planned Unit Development, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, shall be audited at least once a year by an outside auditor employed by the Board who shall not be a resident of the Planned Unit Development, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Lot in the Planned Unit Development who requests the same in writing from the Secretary.
- (m) To do such other things and acts not inconsistent with the Act, the Declaration or the Bylaws or by a resolution of the Association.

2. Composition of Board. Board members shall be elected and removed, and vacancies shall be filled in the manner provided by the Declaration and Bylaws. The names and addresses of persons who are to serve as Board members until the first annual meeting of Lot Owners or until their successors are elected and qualify, are:

**PRESIDENT:** Mark Brenchley  
399 North Main, Suite 200  
Logan, Utah 84321

**VICE PRESIDENT:** Tony Johnson  
399 North Main, Suite 200  
Logan, Utah 84321

**SECRETARY/TREASURER:** Eric Lindsey  
399 North Main, Suite 200  
Logan, Utah 84321

3. Election. At the first regular Association meeting, two (2) Board members shall be elected for three (3) year terms and one (1) Board member shall be elected for a one (1) year

term. At each annual Association meeting thereafter any vacant seat on the Board shall be filled with a member elected for a three (3) year term. Only Lot Owners and officers and agents of Owners other than individuals shall be eligible for Board membership. At the annual Association meeting, a Lot Owner may vote in favor of as many candidates for Board membership as there are seats on the board to be filled.

Any Board member who fails on three (3) successive occasions to attend Board or Association meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board and/or Association meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his or her seat. The remaining Board members shall elect a replacement to sit on the Board until expiration of the term for which the member being replaced was elected. Unless a member forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Board until his successor is elected. Board members shall be reimbursed for all expenses reasonably incurred in connection with Board or Association business.

4. Vacancies. Vacancies on the Board shall be filled as provided in these Bylaws.

5. Regular Meetings. A regular annual meeting of the Board shall be held immediately after the adjournment of each annual meeting of the Association. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the President or the Board may from time to time designate.

6. Special Meetings. Special meetings of the Board shall be held whenever called by the President, Vice-President, or by two (2) or more Members. By unanimous consent of the Board, special meetings may be held without call or notice at any time or place.

7. Quorum. A quorum for the transaction of business at any meeting of the Board shall consist of a majority of members of the Board then in office.

8. Compensation. Members of the Board as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Board from serving the Planned Unit Development in any other capacity and receiving compensation therefor.

9. Waiver of Notice. Before or at any meeting of the Board, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

10. Action Without Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if authorized by a writing signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary.

11. Adjournments. The Board may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

12. Indemnification. Every Board member shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Board member, or any settlement thereof, whether or not he is a Board member at the time such expenses are incurred, except in such cases wherein the Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Board member may be entitled.

13. Report of Board. The Board shall present at each annual Association meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Properties.

14. Manager. The Board may carry out through a professional property manager ("Manager") any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Board. The Manager shall be responsible for managing the Properties for the benefit of the Board, the Association and the individual Lot Owners, and shall, to the extent permitted by law and the terms of the management agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any agreement for professional management of the Properties which may be entered into by the Board or the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one (1) year periods, and shall provide that such management agreement may be terminated with or without cause by either party upon not more than thirty (30) days written notice, and without any payment of a termination fee.

## VI. OFFICERS

1. Designation and Election. The principal officers of the Board shall be a President, a Vice-President, a Secretary/Treasurer, all of whom shall be elected by and from the Board. The Board may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Board immediately following the annual meeting of the Lot Owners; provided, however, that elections of officers may be held at any other meeting of the Board.

2. Other Officers. The Board may appoint such other officers, in addition to the officers hereinabove expressly named, as they shall be deemed necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Board.

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Board.

4. President. The President shall be the chief executive of the Board, and shall exercise general supervision over its property and affairs. The President shall sign on behalf of the Properties all conveyances, mortgages and contracts of material importance to its business, and shall do and perform all acts and things which the Board may require of him. The President shall preside at all meetings of the Association and the Board. The President shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the members (or otherwise) from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Planned Unit Development.

5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board shall appoint some other member thereof to do so on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be prescribed by the Board.

6. Secretary. The Secretary shall keep the minutes of all meetings of the Board and of the Association; he shall have charge of the books and papers as the Board may direct; and he shall in general, perform all the duties incident to the office of Secretary. The offices of Secretary and Treasurer may be held by the same person.

7. Treasurer. The Treasurer shall have the responsibility for the funds and securities of the Board and the funds and securities of the Association and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Board and the Association. The Treasurer shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Board and shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Association in such depositories as may from time to time be designated by the Board or the Association. The offices of Secretary and Treasurer may be held by the same person.

8. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Board in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken.



9. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deed, leases, checks and other instruments of the Planned Unit Development for expenditures or obligations shall be executed by any two (2) officers of the Board or by such other person or persons as may be designated by the Board except that the President shall be one of the signatories on all conveyances, mortgages and contracts of material importance.

## VII. ACCOUNTING

1. Books and Accounts. The books and accounts of the Board shall be kept under the direction of the treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Board shall be reviewed by a person or firm approved by the Association. Report of such review shall be prepared and submitted to the Lot Owners at or before the annual meeting of the Association. Provided, however, that a certified audit by a certified public accountant approved by the Association shall be made if Owners representing at least seventy-five (75%) percent of the undivided interest in the Common Area determine to require the same.

3. Inspection of Books. All books and records at the Association shall be available at the principal office of the Board and may be inspected by any Lot Owner, or his agent or attorney, for any proper purpose during reasonable business hours.

4. Fiscal Year. The fiscal year of the Association shall consist of the twelve (12) month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of organization and terminate on December 31. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

## VIII. BUILDING RULES

The Board shall have the power to adopt and establish, by resolution, such building, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Properties and the Board may from time to time, by resolution, alter, amend, and repeal such rules and regulations. Lot Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall apply and be binding upon all Lot Owners of the Planned Unit Development. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

## IX. AMENDMENT OF THE BYLAWS

These Bylaws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration.

## X. OPERATION AND MAINTENANCE OF CONDOMINIUM PROJECT

The Board shall be responsible for the maintenance, control, operation and management of the Properties in accordance with the provisions of the Act, the Declaration under which the Devonshire Downs was established and submitted to the provisions of the Act, these Bylaws and such rules and regulations as the Association may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Association.

## XI. NOTICE

1. Manner of Notice. All notices, demands, bills, statement or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Board or the Manager, at the principal office of the Manager or at the principal office of the Board or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

## XII. COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These Bylaws are set forth in compliance with the requirements of the Act.

2. Conflict. These Bylaws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

3. Severability. These Bylaws are set forth to comply with the requirements of the State of Utah. In case any of the Bylaws are in conflict with the provisions of any of its statutes, the provisions of the statutes will apply. If any provisions of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws, shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

5. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

6. Miscellaneous. Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

**ADOPTED AND EXECUTED AS OF THE SAME DATE THE DECLARATION WAS EXECUTED.**