

WHEN RECORDED, RETURN TO:

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Attn: Kerry L. Owens

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WELLING SUBDIVISION**

_____, 2007

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WELLING SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WELLING SUBDIVISION is made this ___ day of _____, 2007, by WELLING SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Idaho nonprofit corporation, with respect to the following:

RECITALS:

A. The Association (defined below) is the successor in interest to Dave Welling & Associates, Inc. ("Original Association") under that certain Declaration of Covenants, Conditions and Restriction dated October 15, 1984 and recorded with the Fremont County Recorder's Office as instrument no. 393589, as amended by that certain Amendments to Declaration of Covenants, Conditions and Restrictions dated June 30, 2004, and recorded in the Fremont County's Recorder's Office as instrument no. 490030 (together, the "Original Declaration"). The Original Declaration encumbers that certain real property known as the Welling Subdivision located in Fremont County, Idaho, and more particularly described on Exhibit A attached hereto and by this reference made a part hereof ("Welling Subdivision").

B. It is the intention of the Association in imposing the covenants, conditions and restrictions in this Welling Declaration (defined below) to protect and enhance the property values and aesthetic values of the Lots all for the mutual protection and benefit of the Lots and the Owners of the Lots. The covenants, conditions and restrictions in this Welling Declaration are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other Person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Welling Subdivision.

C. At a duly called special meeting of the shareholders of Original Association, not less than seventy-five percent (75%) of such shareholders affirmatively voted to incorporate the Association to replace the Original Association and to assume the responsibility to manage the affairs of the Welling Subdivision pursuant to this Welling Declaration.

D. The Association hereby certifies that, pursuant to the Bylaws and Section 17 of the Original Declaration, at the special meeting held on _____ 2007, not less than seventy-five percent (75%) of Owners of Lots affirmatively voted to approve this Welling Declaration.

NOW, THEREFORE, THE ASSOCIATION hereby amends and restates the Declaration agrees as follows:

**ARTICLE 1
DEFINITIONS**

1. Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Welling Declaration, shall have the following meanings:

- 1.1 “ARC” shall have the meaning set forth in Section 3.1.
- 1.2 “Articles of Incorporation” shall have the meaning set forth in Section 4.1.
- 1.3 “Assessment” shall mean an annual assessment or a special assessment imposed by the Association.
- 1.4 “Association” shall mean WELLING SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Idaho nonprofit corporation and as the context requires, the officers and directors thereof.
- 1.5 “Association Areas” shall mean all areas together with all equipment, facilities, fixtures, and other personal property and real property improvements used and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, (a) the community water system and related Improvements together with Lot 15 of Block 4 as shown on the Welling Plat; (b) the boat ramp and related Improvements, together with Lot 17 of Block 6 as shown on the Welling Plat; (c) the community sanitary sewer system and related Improvements together with Lot 3 of Block 3 and with such easements therefore as shown on the Welling Plat; (d) the streets shown on the Welling Plat; and (e) all equipment, fixtures, facilities, and other personal property and real property improvements owned or hereafter purchased in accordance with this Welling Declaration with monies from the Association Expense Fund. Except as otherwise set forth in this Welling Declaration, the Association Areas shall be owned by the Association. Subject to this Welling Declaration, all Association Areas shall be maintained, managed and controlled by the Association for the use and enjoyment of the Owners as more fully described in this Welling Declaration.
- 1.6 “Association Expenses” shall have the meaning set forth in Section 6.2.1(ii).
- 1.7 “Association Expense Fund” shall have the meaning set forth in Section 6.2.1(iii).
- 1.8 “Bylaws” shall have the meaning set forth in Section 4.6.
- 1.9 “County” shall mean Fremont County, a corporate body and political subdivision of the State of Idaho, and its appropriate departments, officials, and boards.
- 1.10 “Design Review Guidelines” shall mean the means those design guidelines for construction of residential homes on the Lots as established by the Welling Board from time to time.
- 1.11 “Dwelling” shall mean the primary single family residence built or to be built on any Lot.
- 1.12 “Improvement” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, storage buildings, sheds and additions to them; walkways, retaining walls, gazebos, fences, driveways, trees, shrubs, bushes, landscaping, pools, decks, gazebos, tennis courts, hard surfaced areas, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

1.13 “Lots” shall mean the single family residential building lots shown on the Welling Plat.

1.14 “Mortgage” shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

1.15 “Owner” shall mean the Person or Persons having title to any Lot. Owner shall mean the Person holding fee simple title, and buyers under any contract, but shall exclude any Person or entity holding title only for purposes of securing performance of an obligation, unless that entity has taken possession. “Owner” shall not include the County.

1.16 “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Idaho.

1.17 “Welling Board” shall mean the duly elected and acting board of directors of the Association.

1.18 “Welling Declaration” shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Welling Subdivision, together with any subsequent amendments, supplements or additions.

1.19 “Welling Plat” shall mean the official subdivision plat or plats of the Welling Subdivision on IP Bills Island as approved by the County, as it may be amended from time to time, that was recorded in the official records of the Fremont County Recorder’s Office, on November 19, 1985, as Entry No. 393750. The Welling Plat is hereby incorporated into this Welling Declaration by this reference.

1.20 “Welling Subdivision” shall have the meaning set forth in Recital A above.

**ARTICLE 2
DIVISION OF PROPERTY**

2.1 Submission to Declaration. All of the Welling Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a residential subdivision to be known as Welling Subdivision. All of the Welling Subdivision is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth in this Welling Declaration and in the Welling Plat, each and all of which are declared and agreed to be for the benefit of the Welling Subdivision and in furtherance of a plan for improvement of said property and the division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to any Person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

2.2 Subdivision into Lots. Pursuant to the Welling Plat, the Welling Subdivision is divided into a total of 89 separate legal Lots as more particularly described on the Welling Plat. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use the Association Areas for the purposes and uses designated by the Board. Lot 15 of Block 4 as shown on the Welling Plat is reserved solely for the community water system and

is owned by the Association for the benefit of the Owners. Lot 17 of Block 6 as shown on the Welling Plat is reserved solely for the boat ramp and related facilities is owned by the Association for the benefit of the Owners. Lot 3 of Block 3 as shown on the Welling Plat is reserved solely for the Community Drainfield Site and related facilities is owned by the Association for the benefit of the Owners.

2.3 Bills Island Property Owners Association. Each Owner, upon purchasing a Lot, shall automatically be a member of the Bills Island Property Owners Association. The Association shall participate in mutual programs of security, fire protection, road maintenance (including the causeway entrance to Bills Island and the security gate thereof); and the Owner shall be subject to the terms, conditions, and assessments in effect from time to time which may in the future, be reasonably made pursuant to said programs. So long as the owners are given the same right to participate in and vote upon any decisions made in aid programs as the present Bills Island property owners are.

ARTICLE 3 ARCHITECTURAL REVIEW COMMITTEE

3.1 Acknowledgement. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of a Lot, acknowledges that, as the Association and the Owners of the Lots, the Association acting in its behalf and on behalf of the Owners has a substantial interest in ensuring that the development and design of the Welling Subdivision is uniformly developed and maintained. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until the Architectural Review Committee of the Association ("ARC") has given its prior written approval for such activity in accordance with the procedures of this Article.

3.2 Architectural Review Committee. The ARC shall consist of at least three (3), but not more than seven (7), Persons who shall be approved, shall serve, and may be removed and replaced in the Welling Board's discretion. The ARC may, in the Welling Board's direction, be divided into one or more committees, each of which shall have the sole responsibility for performance of those ARC responsibilities as may be designated by the Welling Board. The members of the ARC need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount as the Welling Board may establish.

3.3 Fees. The ARC may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

3.4 Design Review Guidelines. The Design Guidelines may impose, without limitation, certain restrictions with respect to a Dwelling's mandatory minimum and maximum square footage, building materials used in constructing the Dwelling, architectural standards and other matters. The Welling Board may prepare the Design Review Guidelines, which shall contain general provisions applicable to all of the Welling Subdivision, which Design Review Guidelines may be amended from time to time by the ARC, provided that such amendment is

approved by the Welling Board the Design Review Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Association or the ARC in considering applications. The Design Review Guidelines are not the exclusive basis for decisions, and compliance with the Design Review Guidelines does not guarantee approval of any application.

Any amendment to the Design Review Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no other limitation on the scope of amendments to the Design Review Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Review Guidelines more or less restrictive.

The Design Review Guidelines shall be made available to Owners and any requesting prospective purchaser who is a party to a binding contract to purchase a Lot. In the Welling Board's sole discretion, such Design Review Guidelines maybe recorded, in which event the recorded version, as it unilaterally may be amended from time to time, shall control in the event of any dispute as to which version of the Design Review Guidelines was in effect at any particular time.

3.5 Procedures.

3.5.1 Application. Prior to commencing construction of any Improvement or commencing any activity within the scope of this Article, an Owner shall submit an application for approval of the proposed activity in such form as the Design Review Guidelines or the ARC may specify. A prospective purchaser who is a party to a binding contract to purchase a Lot also may be permitted to submit an application for approval. Such application shall include drawings and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Review Guidelines and the ARC may require the submission of such additional information as the Welling Board or the ARC deem reasonably necessary to consider any application.

3.5.2 Review Criteria. In reviewing each submission, the ARC may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements. The ARC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to appeal so long as they are made in accordance with the procedures set forth herein.

3.5.3 Procedures Applicable to ARC. The ARC shall, within thirty (30) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may: (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The ARC may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Review Guidelines unless a variance has been granted

pursuant to Section 3.7. In the event that the ARC fails to respond within the thirty (30) day period, disapproval of the application shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

3.5.4 Effectiveness of Approval. If construction does not commence on a project for which Plans have been approved within one (1) year, unless otherwise set forth in the approval, from the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any construction activity. Once construction is commenced, it shall be diligently pursued to completion. All construction shall be completed within two (2) years of commencement unless otherwise specified in the Notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved construction is not completed within the required time, it shall be considered nonconforming and, unless an extension of time is granted, shall be subject to enforcement action by the Association, the ARC, or any aggrieved Owner.

3.6 No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Review Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity until the work is completed, in which case it may be unreasonable to require changes to the Improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

3.7 Variances. The ARC may, upon the request of an Owner and the submission of an application for a variance, authorize variances from compliance with any of the Design Review Guidelines when circumstances such as topography, natural obstructions, hardship (which hardship shall not be either financial in nature or caused by the applicant), or aesthetic or environmental considerations warrant, in the sole discretion of the ARC, as appropriate, but only in accordance with duly adopted regulations and only within the scope of the ARC's authority. No variance shall (a) be effective unless in writing; (b) be contrary to this Welling Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No variance may be impliedly approved. If a variance is required in connection with an application, the variances shall be specifically listed and requested on the application. No provision of this Article 3 shall be deemed to require the recordation of any variance.

EACH OWNER ACKNOWLEDGES THAT DETERMINATIONS AS TO VARIANCES HEREUNDER ARE PURELY SUBJECTIVE AND OPINIONS MAY VARY AS TO THE AESTHETIC EFFECT OF ANY PARTICULAR WAIVER. THEREFORE, EACH AUTHORIZED REVIEWER SHALL HAVE THE SOLE DISCRETION TO MAKE FINAL, CONCLUSIVE, AND BINDING DETERMINATIONS ON VARIANCES AND THEREFORE

SUCH DETERMINATIONS SHALL NOT BE SUBJECT TO APPEAL. THERE ARE NO THIRD PARTY BENEFICIARIES TO ANY VARIANCE WHICH MAY BE GRANTED PURSUANT TO THIS SECTION 3.7. FURTHERMORE, THE ASSOCIATION OR THE ARC SHALL HAVE NO DUTY TO DISCLOSE THE GRANTING OR EXISTENCE OF ANY VARIANCE. EVERY OWNER AGREES, BY ACQUIRING TITLE AND/OR POSSESSORY RIGHTS TO ANY LOT, THAT HE OR SHE WILL NOT BRING ANY ACTION OR SUIT AGAINST THE ASSOCIATION OR THE ARC OR ANY DESIGNATED REPRESENTATIVE OF ANY OF THE FOREGOING FOR THE RECOVERY OF DAMAGES BY REASON OF ANY REQUEST FOR A VARIANCE MADE BY SUCH OWNER, ANY OTHER OWNER OR ANY OTHER PERSON, WHETHER SUCH REQUESTS GRANTED OR DENIED.

3.8 Limitation of Liability. The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Welling Subdivision but shall not create any duty to any Person. Review and approval of any application are made on the basis of aesthetic considerations only, and the ARC shall not bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements; (c) approval of the construction or modification by the governing municipality or whether such approval will be obtained; or (d) conformity of quality, value, size, or design with other Dwellings or the Improvements on a Lot. Neither (1) the Association, the Welling Board, the ARC or any committee or member of the foregoing, nor (2) any Person retained by an ARC as a consultant, nor (3) any employee, agent or representative of those listed in (1), (2), (3) above, (collectively, "Protected Persons") shall be held liable for any claim whatsoever arising out of construction on or modifications to any Lot.

No Protected Person shall be held liable for soil conditions, drainage, or other general site work; any defects in Plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Protected Persons shall be defended and indemnified by the Association as provided for in this Welling Declaration or as required by Idaho law.

3.9 Enforcement. Any construction, alteration, or other work done in violation of this Article or the applicable Design Review Guidelines shall be deemed to be nonconforming. Upon written notice from the Association, or the ARC, the Owner of such Lot shall, at his or her own cost and expense and within such time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the real property, Lot or Dwelling to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, or its designees shall have the right to record a Notice of Non-Compliance and/or to enter the real property, remove the violation, and restore the real property to substantially the same condition as previously existed. All costs (which may include administrative charges and legal fees), together with interest at the rate established by the Welling Board (not to exceed the maximum rate then allowed by Idaho law), may be assessed against the non-conforming Lot under this Section 3.9 and collected as an Special Assessment unless otherwise prohibited in this Welling Declaration. The right of the

Association or its designees to remove a non-conforming construction, alteration, or other work in violation of this Article or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association, or its designees may have at law, in equity, or elsewhere in the Declaration, Articles of Incorporation or Bylaws of the Association.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved activity and all activity previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If any Owner fails to commence and diligently pursue to completion all approved activity by the deadline set forth in the approval, the Association or its designees, shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the procedures set forth in the ARC's rules and regulations, if any, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Special Assessment unless otherwise prohibited in this Welling Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Review Guidelines may be excluded from the Welling Subdivision, subject to any applicable notice and hearing procedures set forth by the Association. In such event, the Association, and its officers and directors, employees, agents, or representatives shall not be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC. To the fullest extent permitted by Idaho law, enforcement of this Article by the Association shall not be subject to laches or any statute of limitations. Any Special Assessment levied for costs due under this Section 3.9 shall not be considered a fine or penalty and may be imposed apart from, or in conjunction with any other Special Assessment permitted under this Welling Declaration.

ARTICLE 4 ASSOCIATION

4.1 Association. The President of the Association caused to be filed articles of incorporation with the Idaho Secretary of State to create the Association ("Articles of Incorporation"). The members of the Association shall be the Owners of Lots within the Welling Subdivision, and the Association is established to perform the functions and exercise the rights and powers for the benefit of the Lots and the Owners and the enforcement of the covenants as set forth in this Welling Declaration. Each Owner of a Lot shall be a member of the Association. Membership in the Association shall be an appurtenance to each Lot, and is transferable only in conjunction with the transfer of the title to a Lot. The Association shall have and exercise, as necessary, the powers set forth in this Welling Declaration.

4.2 Enforcement Powers. The Association shall have the power to enforce the covenants set forth in this Welling Declaration by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of the covenants and to incur expenses for that purpose. The Welling Board shall have the authority to compromise

claims and litigation on behalf of the Association resulting from the enforcement of these covenants. The Welling Board shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Owners to enforce personally the covenants set forth in this Welling Declaration in their own name. The Association may appear and represent the interests of the Welling Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Lots and/or Owners. Owners of the Lots may appear individually.

4.3 Welling Board and Officers.

4.3.1 The affairs of the Association shall be conducted by the Welling Board consisting of at least three (3) directors and also by such officers as the Welling Board may elect or appoint in accordance with the Articles of Incorporation and the Bylaws as the same may be amended from time to time. The Welling Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Welling Board, be responsible for the day-to-day operation of the Association. The Welling Board shall determine the compensation to be paid to the manager.

4.3.2 The Welling Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Welling Declaration, the Articles of Incorporation and the Bylaws of the Association, including, but not limited to, the following: (i) administration of the Association; (ii) preparing and administering an operational budget; (iii) establishing and administering an adequate reserve fund; (iv) scheduling and conducting the annual meeting and other meetings of the Owners; (v) collecting and enforcing the assessments and fees from the Owners; (vi) accounting functions and maintaining records; (vii) promulgation and enforcement of rules and regulations; (viii) causing the Association Areas to be maintained; (ix) entering into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers; (x) opening bank accounts on behalf of the Association and to designate the signatures therefore; (xi) bringing, prosecuting and settling litigation for itself, the Association and the Welling Subdivision; (xii) owning, purchasing or leasing, holding and selling or otherwise disposing of, on behalf of the Owners, items of real and personal property; (xiii) doing all other acts necessary for the operation and maintenance of the Welling Subdivision and the performance of its duties as agent for the Association including the maintenance and repair of any portion of the Welling Subdivision if necessary to protect or preserve the Welling Subdivision; (xiv) purchasing and maintaining insurance; and (xv) all the other duties imposed upon the Welling Board pursuant to this Welling Declaration, including enforcement thereof.

4.3.3 The directors of the Welling Board may be removed, replaced or elected by the majority vote of Owners, at any meeting of the Owners conducted in accordance with the Bylaws. The number of directors of the Welling Board may be changed by amendment of the Bylaws of the Association.

4.4 Maintenance of Association Areas. The Association Areas shall be maintained, cleaned, replaced, repaired and reconstructed by the Association and be re-landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and consent of the Welling Board, and in accordance with the provisions of this Welling Declaration. Without

limiting the generality of the foregoing, the Association shall (a) maintain, clean, replace, repair and keep in a sanitary condition and in a state of good repair all Association Areas; (b) re-landscape, re-construct and repair all Association Areas at such time as the same are in a state of disrepair and require replacement; and (c) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all areas, easements, Improvements, landscaping and vegetation set forth in the Declaration or the Welling Plat as the responsibility of the Association.

4.5 Rules and Regulations. By a majority vote, the Welling Board may, from time to time and subject to the provisions of this Welling Declaration, adopt, amend and repeal rules and regulations that restrict and govern the use of the Association Areas. The rules and regulations shall not discriminate among Owners. Each Owner, the family members of each Owner, and any invitee, licensee or tenant of each Owner shall comply with all of the rules and regulations. ALL OWNERS ARE GIVEN NOTICE THAT USE OF THE ASSOCIATION AREAS IS LIMITED BY THE RULES AND REGULATIONS AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS ARE ON NOTICE THAT THE WELLING BOARD MAY HAVE ADOPTED CHANGES TO THE RULES AND REGULATIONS. COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE ASSOCIATION.

4.6 Bylaws. The day to day administration of the Association's affairs, including the manner in which directors are elected and their terms of office are set forth in the bylaws of the Association ("Bylaws"), which may be amended from time to time by the Association as provided in those Bylaws. No amendment of the Bylaws shall have the effect of releasing or amending the covenants, conditions, or restrictions set forth in this Welling Declaration.

4.7 Voting Rights. There shall be one vote for the membership in the Association that is appurtenant to each Lot, and each Owner shall be entitled to cast one vote for each Lot he or she owns. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot, unless the other Owners are also present and object or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

4.8 Amplification. The provisions of this Article 4 may be amplified by the Articles of Incorporation and the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Welling Declaration.

**ARTICLE 5
EASEMENTS**

5.1 Easements for Maintenance. The Association shall have the irrevocable right to have access from time to time to all Association Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage.

5.2 Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the streets shown on the Welling Plat as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

5.3 Easements Deemed Created. All conveyances of Lots within the Welling Subdivision hereafter made, whether by the Welling Plat or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

5.4 Easements Reserved by Association. The Association shall have power to grant and convey to any third party and hereby reserves unto itself transferable easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Welling Subdivision for the purpose of: (a) constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Welling Subdivision; and (b) constructing, erecting, repairing, replacing, operating and maintaining the Association Areas and Improvements thereto.

5.5 Easements. ALL OWNERS ARE GIVEN NOTICE THAT THEIR LOTS SHALL BE SUBJECT TO EASEMENTS AS SHOWN ON THE WELLING PLAT AND THE EASEMENTS CREATED UNDER THIS WELLING DECLARATION.

5.6 Ownership of Streets and Association Areas. Unless otherwise determined by the Board, all streets shown on the Welling Plat within the Welling Subdivision and all Association Areas shall be owned by the Association.

5.7 Inseparability. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Welling Declaration, including appurtenant membership in the Association, and an irrevocable license to use, occupy and enjoy the Association Areas. No Owner nor the Association may bring any action for partition thereof.

5.8 Separate Taxation. Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Idaho or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The streets shown on the Welling Plat within the Welling Subdivision shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Idaho or of any political subdivision thereof or of any special

improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. All such taxes, assessments, and other charges on the streets, shown on the Welling Plat within the Welling Subdivision shall be separately levied against the Association. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot or rights in and to the Association Areas.

5.9 Mechanics' Liens. No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any of the Association Areas.

5.10 Restriction on Easement Rights Granted by Owners. Without the prior written consent of the Association, no Owner of any Lot within the Welling Subdivision shall grant any easement, license, permit or other rights to any other Person or entity for the purpose of granting to such other Person or entity any rights of ingress and egress, any rights to construct, operate or maintain any road, trail or other right of entry or passage over and across such Lot, any rights to construct, operate, maintain, repair or replace any utility easements or any other rights or interests not otherwise established and created pursuant to the Welling Plat and this Welling Declaration.

ARTICLE 6 ASSESSMENTS

6.1 Agreement to Pay Assessments. Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Welling Declaration. Assessments made by the Association shall be fixed, established and collected from time to time as provided in this Article 6.

6.2 Regular Assessments. Regular assessments shall be computed and assessed against all Lots in the Welling Subdivision as follows:

6.2.1 Association Expenses.

(i) Annual Budget. On or before the 1st day of November of each year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Welling Subdivision. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners on or before the 15th day of November of each year. Such budget, with any changes therein, shall be adopted by the Owners at each annual meeting of the Owners. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual

period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.

(ii) Basis of Annual Budget. The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Association Expenses") arising out of or connected with maintenance and operation of the Association Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; security, gate house operation, wages for Association employees, including fees for a manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Lots and/or the Owners or by reason of this Welling Declaration.

(iii) Annual Assessments. The Association shall establish a regular, equal monthly assessment (which shall be the same for all of the Lots) to be paid by each Owner to the Association for deposit into a deposit account in the name of the Association ("Association Expense Fund"). The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Association Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the Association Expenses be apportioned equally among and assessed equally to all Lots. Each monthly installment of the regular assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date it becomes due and payable until paid. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

6.2.2 Inadequate Funds. In the event that the Association Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth below, except that the vote therein specified shall not be necessary.

6.3 Special Assessments. In addition to the regular assessments, the Association may levy, at any time and from time to time, upon affirmative vote by Owners of at least fifty-one percent (51%) of the Lots, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Association Areas or any part thereof, or for any other expenses incurred or to be incurred as provided in this Welling Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date such portions become due until paid.

6.4 Assessment of Certain Costs of Maintenance and Repair of Association Areas. In the event that the need for maintenance or repair of Association Areas, Improvements and other property maintained by the Association is caused through the willful or negligent act of any Owner or any family members, guests, invitees or tenants of such Owner, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the lien for Assessments under Section 6.5.

6.5 Lien for Assessments. All sums assessed to the Owner of any Lot within the Welling Subdivision pursuant to the provisions of this Article 6, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article 6, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Fremont County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by nonjudicial foreclosure or judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Idaho. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.

6.6 Personal Obligation of Owner. The amount of any Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Association Areas or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

6.7 Statement of Account. Upon written request of any Owner, mortgagee, prospective mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid Assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such Assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of Persons who rely thereon in good faith.

6.8 Personal Liability of a Purchaser. A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not

prejudice the purchaser's right to recover from the seller the amount of such Assessments paid by the purchaser for such Assessments.

6.9 Amendment of Article. Except as may be necessary to conform to the law, as it may be amended from time to time, this Article 6 shall not be amended unless the Owners of at least fifty-one percent (51%) of the Lots consent and agree to such amendment by a duly recorded instrument.

ARTICLE 7 INSURANCE

7.1 Types of Insurance. The Board may elect to obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Idaho:

7.1.1 Fire and Casualty Insurance. A policy or policies of insurance on the Association Areas of the Welling Subdivision in such amounts as shall provide for replacement thereof in the event of damage or destruction from casualty against which such insurance is customarily maintained by other subdivisions similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection as to the Association Areas. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

7.1.2 Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive public liability insurance coverage for the Welling Subdivision, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities of the Association pursuant to the terms of this Welling Declaration and the Articles of Incorporation and the Bylaws of the Association.

7.1.3 Workers' Compensation Insurance. Workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.

7.1.4 Fidelity Insurance or Bond. Fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of directors, officers, employees or the manager, destruction or disappearance of money or securities, and forgery.

7.2 Form of Insurance. Insurance coverage on the Welling Subdivision, insofar as possible, shall be in the following form:

7.2.1 Fire and Casualty Insurance. Casualty and hazard insurance in a form or forms naming the Association as the insured, as trustee for the Owners, and which policy or policies shall specify the interest of each Owner (Owner's name and Lot number), and shall

contain a standard, noncontributory mortgagee clause in favor of each mortgagee which from time to time shall give notice to the Association of its mortgage. The Association shall furnish to each Owner, and to each mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

7.2.2 Public Liability and Property Damage Insurance. Public liability and property damage insurance which names the Association as the insured, as trustee for each Owner, for the manager, if any, and which protects each Owner, the manager, if any, against liability for acts or omissions of any of them in connection with all activities of the Association pursuant to the terms of this Welling Declaration and the Articles of Incorporation and the Bylaws of the Association.

7.3 Additional Coverage. The provisions of this Welling Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Welling Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

7.4 Adjustment and Contribution. Exclusive authority to adjust losses under the insurance policies hereafter maintained by the Association shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees.

7.5 Insurance Carried by Owners. Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon his Lot, and all improvements and personal property located thereon, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Sections 7.1 and 7.2 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Association pursuant to this Article. The Association shall have no obligation or responsibility to carry insurance on the Lots, or any improvements located on the Lots.

7.6 Review of Insurance. The Board shall review from time to time the coverage and policy limits of all insurance maintained by the Association.

ARTICLE 8 DAMAGE OR DESTRUCTION

8.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Association Areas of the Welling Subdivision upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to

the interest of an Owner in the Association Areas which may be necessary or appropriate to execute the powers herein granted.

8.2 Destruction of Association Areas. Upon the damage or destruction of all or any portion of the Association Areas, the Association shall proceed to repair and reconstruct the Association Areas. The Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the repair and reconstruction as required herein, then the Association shall levy a special assessment against all Owners pursuant to the provisions of Article 6 above to collect funds necessary to accomplish such repairs and reconstruction.

8.3 Repair or Reconstruction. As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Association Areas damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

8.4 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be held and used by the Association to offset future expenses of the Association.

ARTICLE 9 CONDEMNATION

9.1 Condemnation. If at any time or times all or any part of the Association Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Association Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

9.2 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain shall be held and used by the Association to offset future expenses of the Association.

ARTICLE 10 RESTRICTIONS ON ALL LOTS

The following restrictions on use apply to all Lots within the Welling Subdivision:

10.1 Zoning Regulations. The lawfully enacted zoning regulations of the County, and any building, fire, and health codes are in full force and effect in the Welling Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, or ordinance.

10.2 No Mining Uses. The property within the Welling Subdivision shall be used for residential purposes only, and no surface occupation for mining, drilling, or quarrying activity will be permitted at any time on any Lot, trail, street or other area within the Welling Subdivision.

10.3 No Business or Commercial Uses. No portion of the Welling Subdivision may be used for any commercial business use, provided however that nothing in this provision is intended to prevent the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Welling Subdivision. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside on any Lot. No signs associated with any home occupation are permitted. The operation by the Association of the gate house for the benefit of the Lots within the Welling Subdivision shall not be deemed a prohibited commercial or business use.

10.4 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of at least a temporary certificate of occupancy by the County.

10.5 Primary Dwelling to be Constructed First. No garage, storage unit, or other out building or Improvement may be constructed prior to the commencement of construction of the primary Dwelling on the Lot.

10.6 No Re-Subdivision. No Lot may be subdivided.

10.7 Underground Utilities. Except for propane tanks and related lines, all gas, electrical, telephone, television, and any other utility lines in the Welling Subdivision are to be underground, including lines within any Lot which service installations or Improvements entirely with that Lot.

10.8 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

10.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

10.10 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues). No Owner will occupy a Lot in a manner that is in violation of any State or Federal environmental protection law or regulation concerning the storage, disposal, or use of toxic or hazardous materials.

10.11 No Open Burning; Open Fires. The open burning of yard trimmings, construction waste, or other materials on the Lot is prohibited. Open camp fires must be in a pit constructed for that purpose, and have ready access to running water. Open fires of any kind are not permitted when danger is "extreme" as designated by the "fire danger" sign across the street from the security house.

10.12 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Improvement, Dwelling or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any public or private street.

10.13 No Annoying Lights. Any outdoor lighting shall be subject to approval by the ARC, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the immediate vicinity of the building or Improvement it is intended to serve. Lighted tennis courts, sport courts, and similar lighted recreation facilities are prohibited.

10.14 No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Lots, except for properly operating and maintained security or fire alarms.

10.15 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

10.16 Vehicles Restricted to Streets. No motor vehicle will be operated on the Welling Subdivision except on improved streets and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress by duly licensed, "street legal" vehicles or while loading the equipment for lawful transport on public streets.

10.17 Kennels. No kennel or dog run may be placed closer than 50 feet to any Dwelling other than that of the Owner of the kennel. Dogs must be on a leash.

10.18 No Firearms. No firearms of any kind, except b-b guns, pellet guns, or similar air-powered firearms, may be discharged within the Welling Subdivision.

ARTICLE 11 RESTRICTIONS ON IMPROVEMENTS

All Improvements on any Lot shall be subject to the following restrictions:

11.1 Compliance with Design Review Guidelines. All Dwellings and Improvements to a Lot and all construction and landscaping activities must comply with: (i) the Design Review Guidelines; (ii) all codes, rules, regulations and requirements of the County; and (iii) the Declaration.

11.2 Number of Dwellings. Only one Dwelling may be constructed on any Lot.

11.3 Construction Activity Confined. All construction activity, Improvements, and Dwellings are to be confined to the respective Owner's Lot area.

11.4 Building Setback. All building setbacks from property line shall conform to the applicable County ordinances and the Welling Plat.

11.5 Size of Dwellings. The size, height and location of the Dwelling and other improvements constructed on each Lot within the Welling Subdivision shall be consistent with any restrictions pertaining thereto that appear on Welling Plat, shall be at least one thousand two hundred (1,200) square feet of indoor living area for a single level Dwelling or at least one thousand (1,000) square feet on the ground floor of a multi-level Dwelling and shall be subject to all necessary approvals of the ARC as set forth in the Design Review Guidelines. Building location and design should place buildings in a manner to have the building mass follow the natural, existing contour of the land and to minimize visibility from adjoining or adjacent Lots. Notwithstanding the foregoing, existing Dwellings, as of the date of recordation of this Declaration, that do not comply with the minimum square foot requirements hereunder are exempt from the minimum square foot requirements hereunder provided that any destruction or casualty that requires a rebuilding of more than fifty percent (50%) of an exempt Dwelling shall necessitate compliance with this Section 11.5.

11.6 Sewer Disposal System Required. All Lots shall have a sewer disposal system consisting of septic tanks and waste disposal system specifically approved by the ARC and the County for use with any Dwelling and compatible with the community sanitary sewer system. Each Owner seeking to connect to the community sanitary sewer system shall deliver 10-days prior written notice to the ARC and schedule a time to have at least one member of the ARC present at the time of connection.

11.7 Exterior Lighting Standards. In addition to the requirements of Section 10.13, all exterior lighting must be adequately shielded and controlled to prevent glare and illumination to adjacent properties or streets. Bare light globe fixtures, such as flood and spot lights, are prohibited.

ARTICLE 12 OWNERS' MAINTENANCE OBLIGATIONS

It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Welling Subdivision:

12.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe and healthy condition.

12.2 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is a dangerous, unsafe, unsanitary, or unsightly condition in violation of this Welling Declaration, the Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within thirty (30) days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement together with all expenses and fees of the Association shall be charged to the Owner, who agrees to pay promptly such amounts for work performed under this Section 12.2. All sums assessed to the Owner of a Lot under this Section 12.3, together with interest at the rate of one and one-half percent (1½%) per month, shall constitute an Assessment by the Association and shall be secured by a lien on such Lot in favor of the Association. The Association shall have all rights and remedies to enforce an Assessment under this Section 12.2 in the same manner as Assessments under Article 6.

12.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the ARC. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or siding or trim materials will be made without the advance consent of the ARC.

12.4 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss provided, however, that alterations or deviations from the originally approved plans will require prior approval of the ARC. Nothing in this Welling Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Welling Board, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than ninety (90) days without repairs commencing, and any damaged structure which does remain un-repaired after ninety (90) days following the occurrence of damage is deemed a nuisance which may be abated by the Association at the expense of the Owner.

ARTICLE 13 CONSTRUCTION REGULATIONS

13.1 Required Construction Regulations. To minimize the inconvenience to adjoining Owners, the following construction regulations shall be enforced during the construction period. These regulations shall be made a part of the construction contract between the Owner and his or her contractor on any Improvements on a Lot. Each Owner shall be bound by these regulations, and violations committed by the contractor shall be deemed a violation by the Owner for which the Owner is liable.

13.2 Portable Office or Trailer. Any owner whose contractor desires to bring a portable office or trailer onto a Lot shall first apply for and receive written approval from the ARC. The ARC will work with the Owner to determine the best location for the portable office.

The portable office will be located only in a location approved by the ARC, which shall be on the Owner's Lot and within the area that can be disturbed by construction or within driveway areas.

13.3 Removal of Temporary Office. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to occur of (i) the issuance of a Certificate of Occupancy, (ii) the termination, expiration, or cancellation of the building permit, or (iii) the suspension of construction activities for a period of sixty (60) days.

13.4 Construction Debris Removal. Owners and their contractors are responsible for collection of trash at the end of each work day and depositing construction trash, packing material, unusable scraps, and other debris in a suitable container. Lightweight material must be weighted down to prevent wind from blowing it away. Debris must be contained until removed from the Lot to an appropriate land fill. No trash may be burned, buried, or otherwise disposed of on the Lot. No concrete trucks may be cleaned out on any Lot or anywhere within the Welling Subdivision. If construction debris is excessive, the Board may require a dumpster to keep the Lot clean.

13.5 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of the Dwelling or any other Improvements. Materials must be stored in neat stacks and covered. No more material may be delivered to the site than can reasonably be consumed in a week's time, provided that once the Dwelling is enclosed, materials may be stored inside, out of sight, indefinitely.

13.6 Sanitary Facilities. Each Owner is responsible for the installation and maintenance of an approved portable toilet facility on the site during construction. The portable toilet must be located on the Lot at a location approved by the ARC and must be removed from the site at such time as the permanent plumbing system is operational.

13.7 Removal of Mud. The Owner and each contractor are responsible for keeping mud from the construction site on such Owner's Lot from being deposited on the roadways of the Welling Subdivision. This may require cleaning of truck tires before leaving the site.

13.8 Duration of Construction. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially complete within a period of 24 months from commencement. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

ARTICLE 14 COMBINATION OF LOTS

Subject to the provisions of this Welling Declaration, the limitations set forth in this Article and the approval of the Welling Board and the County, any Owner may combine two adjoining Lots with adjoining frontage on the same street within the Welling Subdivision. The following regulations will apply in the event of a combination:

14.1 Maximum Livable Square Footage. The maximum livable square footage for the Dwelling on the combined Lots will be determined by the ARC.

14.2 Welling Board May Deny Combination. Either the County or the Welling Board has the power to deny the Owner's application to combine Lots on the basis that the resulting combination concentrates too much building mass on a single Lot, that the combination results in damage to significant natural features within the Welling Subdivision such as natural drainage courses or significant wooded areas, or results in a structure that violates the provisions of this Welling Declaration or other applicable County requirements.

14.3 Combination Deemed Permanent. The combination of Lots shall be deemed to be permanent, and the Lots may not be independently sold once construction has commenced on the Improvements for the combined Lot.

14.4 Record Notice of Combination. The Owner of any Lots that have been combined will execute and deliver to the Welling Board a notice in recordable form, containing the name of the Owner and the legal description of the Lots combined, which Notice will state that the two Lots have been combined and cannot subsequently be subdivided. The Owner will also submit a current title report showing any lien holders, who will also be required to sign the notice. The Welling Board shall record this notice with the Fremont County Recorder upon the commencement of construction. The Owner shall pay to the Association a fee related to the foregoing in an amount determined by the Welling Board.

14.5 Plat Amendment. The combination of Lots may also require a formal amendment of the Welling Plat and compliance with other applicable state or County regulations, all of which will be done at the sole expense of the Owner of the Lots to be combined.

14.6 Assessment of Combined Lots. All amounts assessed against any combined Lots by the Association shall be assessed as though the combined Lots were separate Lots for purposes of all such assessments.

ARTICLE 15 MORTGAGEE PROTECTION

15.1 Mortgage Protection. No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

15.2 Priority of Liens. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions of Article 6 shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such Assessment or Assessments become due.

15.3 Mortgage Holder Rights in Event of Foreclosure. Any mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments by the Association and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid Assessments shall be deemed to be Association Expenses collectible from all of the Lots in the Welling Subdivision, including the Lot that has been acquired in accordance with the provisions of this Section.

15.4 Amendment. No provision of this Article 16 shall be amended without the prior written consent of at least two-thirds of all first Mortgagees on the Lots within the Welling Subdivision as appear on the official records of Fremont County, Idaho, as of the date of such amendment.

**ARTICLE 16
LAKE FRONT COMMUNITY**

16.1 Assumption of Risk and Waiver of Claims. Each Owner, by its purchase and/or ownership of a Lot, hereby acknowledges that the Welling Subdivision is a lake front community with inherent risks and recreational-type activities, which may include, without limitation: boating, swimming, hiking trails, biking trails, open spaces, wildlife, rugged terrain, horses and horseback riding and similar facilities, events, activities and programs (such inherent risks and activities are referred to collectively as the "Recreational Activities"), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Recreational Activities. Each such Owner agrees that neither the Association, any committee created by the Association, nor any of their directors, officers or members, shall be liable to an Owner or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner's Lot to any Recreational Activity; (b) any claim arising in whole or in part from the negligence of the Association, or any committee created by the Association or any of their directors, officers or members; or (c) any Recreational Activity (collectively referred to herein as the "Waived Claims").

16.2 Indemnification. Each Owner hereby agrees to indemnify, defend and hold harmless the Association, and any committee created by the Association, and their directors, officers or members from and against any and all Waived Claims asserted by such Owner and/or by such Owner's visitors, family, agents, contractors or tenants. Each Owner further covenants that the Association, any committee created by the Association, and the owners and operators of all Recreational Activities shall have the right, in the nature of an easement, to subject all or any portion of the Welling Subdivision to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Recreational Activities.

**ARTICLE 17
GENERAL PROVISIONS**

17.1 Remedies. The covenants, conditions, and restrictions contained in this Welling Declaration may be enforced as follows:

- (a) Any single or continuing violation of the covenants contained in this Welling Declaration may be enjoined in an action brought by any other Owner or by the Association in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.
- (b) Nothing in this Welling Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Welling Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Welling Declaration nor a waiver of the right to take enforcement action with respect to a future violation of such covenants or any other violations.

17.2 Compliance. Each Owner shall comply with the provisions of the Governing Documents, this Welling Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.

17.3 Severability. Each of the covenants contained in this Welling Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

17.4 Limited Liability. Neither the Association, the directors of the Board, the Association, the directors of the Welling Board, the ARC or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under these covenants, and without malice.

17.5 Term of Covenants, Renewal. This Welling Declaration shall expire fifty (50) years from the date it is first recorded with the Recorder of Fremont County, Idaho, provided however that in the last year prior to expiration, this Welling Declaration shall be automatically extended for successive periods of twenty (20) years, unless, by a vote of at least a majority of the then Owners of said Lots, it is agreed to amend or release this Welling Declaration in whole or in part by an appropriate instrument in writing specifying the provisions to be amended or released, and by recording said instrument in the office of the Recorder of Fremont County, Idaho.

17.6 Amendment. Subject to the provisions of this Welling Declaration, the Owners of fifty-one percent (51%) of the Lots may amend the provisions of this Welling Declaration. Any amendment must be in writing and be approved by fifty-one percent (51%) of the Owners at the time of the amendment. No amendment which has the effect of substantially or materially altering the size, nature, or use of the Improvements on any Lot permitted by this Welling Declaration will be binding upon the holder of any mortgage or trust deed on any Lot unless the mortgage or trust deed holder joins in the amendment. Any amendment authorized pursuant to this Section 17.6 shall be accomplished through the recordation of an instrument executed by the Association.

17.7 Constructive Notice. Every Person who owns, occupies, or acquires any right, title or interest in any Lot in the Welling Subdivision is conclusively deemed to have notice of this Welling Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, easements and restrictions against his or her Lot, whether or not there is any reference to this Welling Declaration in the instrument by which he/she acquires his/her interest in any Lot.

17.8 Notices. All notices under this Welling Declaration are deemed effective five (5) business days after the date of mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the property tax assessment rolls if no other address for an Owner is known. Notices delivered by hand are effective upon delivery.

17.9 Liberal Interpretation. The provisions of this Welling Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Welling Subdivision. Section headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

17.10 Covenants Run with the Land. The covenants, conditions, and restrictions in this Welling Declaration are covenants running with the land, and shall burden and benefit the successors and assigns of the Owners for so long as the Welling Declaration is in effect.

IN WITNESS WHEREOF, the Association has caused this Welling Declaration to be executed as of the date first above written.

WELLING SUBDIVISION HOMEOWNERS
ASSOCIATION, INC.,
an Idaho non-profit corporation

By: _____
Print Name: _____
Title: _____

STATE OF IDAHO)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, the _____ of WELLING SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Idaho non-profit corporation.

NOTARY PUBLIC
Residing at:

My Commission Expires:

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WELLING SUBDIVISION**

(Legal Description of Welling Subdivision)

The real property referenced in the foregoing instrument as the Welling Subdivision is located in Fremont County, Idaho and is more particularly described as:

[To be provided]