

Instrument # 439412

VALLEY COUNTY, CASCADE, IDAHO

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Recorded for MICHAEL MONTFORD

DOUGLAS A. MILLER Fee: 28.00

Ex-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

**DECLARATION OF PROTETIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR TREETOP TERRACE**

THIS DECLARATION is made this *First* day of January 2021, by The Montford Family Living Trust, hereafter called "Declarant".

WHEREAS Declarant is the record owner of the real property described in Article III of this Declaration and desires to create thereon a residential community; and,

WHEREAS Declarant desires to provide for the preservation of the values and amenities in said Community, and to this end, desires to subject the real property described in Articles III to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are intended for the mutual benefit of said property and of each owner of a portion thereof;

NOW, THEREFORE, the Declarant declares that the real property in Article III, is and shall be held, transferred, sold, conveyed and occupied subject to covenants, conditions, easements, charges, and liens hereinafter set forth.

**ARTICLE I
DECLARATION**

Declarant hereby declares that each lot, parcel or portion of Treetop Terrace (hereinafter "the property" of "the subdivision") is and shall be held, sold conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions set forth herein:

- i. Shall run with the land constituting the Property, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof;
- ii. Shall inure to the benefit of every lot, parcel or portion of the Property and interest therein;
- iii. Shall inure to the benefit of and be binding upon Declarant, Declarant's successors in interest; and,
- iv. May be enforced by Declarant, by any Owner of such Owner's successors in interest.

**ARTICLE II
DEFINITIONS**

2.01 Assessments: "Assessment" shall mean those payments required of owners, including Regular, Special and Limited Assessments as further defined in the Declaration.

2.02 Community: The term "Community" as used herein shall refer to the Existing Property together with property amended pursuant to the terms of Article III.

2.03 Declaration: The term "Declaration" shall mean this Declaration of Protective Covenants, Condition and Restrictions contained herein.

2.04 Declarant or Developer: The term "Declarant" or "Developer" shall refer to Michael Montford, his successors and assigns, who are the Declarants hereunder.

2.05 Development: The term "Development" shall include the Existing Properties and any additional lands brought within the purview of this Declaration.

2.06 Dwelling, Dwelling Units: The terms "Dwelling" and "Dwelling Units" are interchangeable and shall mean any building or portion thereof located on a parcel and designed and intended for the use and occupancy as a single family residence.

2.07 Existing Properties: The term "Existing Properties" shall mean that real property described in Article III.

2.08 Improvements: The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, poles, signs and all other structures of every type and kind.



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2.10 Lot: The term "Lot" shall mean any parcel of real property designated for single family residential use on the Recorded Plat of the Existing Properties.

2.10 Owner: The term "Owner" shall refer to that person or entity or those persons entities who hold the ownership interest in any Lot as shown on the records of the County Recorder, Valley County, Idaho; such term shall also include any person, persons, entity or entities who succeed to such recorded interest by any means, including buyers under executor contracts of sale excluding those holding an interest merely as security for the performance of obligation.

2.11 Record, Recorded: The term "Record" or "Recorded" shall mean, with respect to any documents, the recordation of said documents in the Office of the County Recorder, Valley County, Idaho.

2.12 Residence: The term "Residence" shall mean a building or buildings, including any garage, carport or similar outbuilding, used for residential purposes.

2.13 Single Family Residential use: The term "Single Family Residential Use" shall mean the occupation and use of a single family dwelling in conformity with this Declaration and any requirements imposed by applicable zoning laws or other state or municipal agencies, rules or regulations. Guest or caretaker quarters shall be included with the term "single family residential" for purposes of these CC&R's, which is not to say such a structure is permitted under the Valley County Land Use and Development Ordinance. Owners must follow all applicable regulations of any governmental entity having jurisdiction therefor prior to construction of such structures.

2.14 Structures: The term "Structures" shall include buildings, outbuildings, fences, walls, stairs, decks, poles and retaining walls.

2.15 Outbuildings: The term "Outbuildings" shall include all buildings detached and separate from a residence.

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

3.01 Existing Property: The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this declaration is located in Valley County, Idaho, and is more particularly described as follows:

See Exhibit "A" attached hereto.

All of the above-described property shall hereinafter be referred to as "Existing Property" or the "Property".

ARTICLE IV PROTECTIVE COVENANTS

4.01 Land Use: All of the subject lots in the Existing Property shall be used and occupied solely for single family residential purposes. Lots 1, 2, 3, & 4 of the subject lots or parcels shall not be split, divided or subdivided into smaller lots or parcels than indicated on the Recorded Plat of Treetop Terrace. Lots 5, 6, & 7 may be split or divided, subject to the compliance with Valley County Land Use Development Ordinance.

4.02 Buildings:

- A. The following buildings shall be permitted to be erected or maintained on any parcel: one detached residence, a private garage for the use of the occupants of such residence, one building for guest caretaker quarters, and one outbuilding which is strictly incidental and appurtenant to a private residence. The construction of Guest caretaker quarters, prior to the construction of a main residence, will be permitted. In the situation where a guest caretaker quarters is constructed first, when construction of the main residence begins, the exterior materials used will need to be similar to the guest caretaker quarters.
- B. Except as provided in this Section 4.02(B)(1)&(2) below, no structure of a temporary character, to specifically include mobile homes, pre-manufactured homes, modular homes, basement, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, nor shall any residential structure be moved on to any lot from any other location, unless the prior written approval from every Owners is obtained.



- i. Garage as temporary residence: A garage may be constructed and used as a temporary residence prior to the construction of a residence, but in no event to exceed a period of six (6) months; The structure must be approved and constructed pursuant to a valid Valley County building permit.
 - ii. Treehouse as a residence: A Treehouse may be constructed and used as a permanent residence or guest caretaker quarter and are to be considered in harmony with the surroundings and overall planned building sites. The structure must be approved and constructed pursuant to a valid Valley County building permit.
- C. All construction must be of good quality and done in a good workmanlike manner. The use of fire resistance materials advocated by Valley County Building Department should be utilized.
 - D. TV Satellite dishes must be screened from view of the road and other homes.
 - E. Neither mobile homes—pre-manufactured homes—nor modular homes shall be allowed within the Subdivision, on a temporary or permanent basis. This is not intended to exclude treehouses, log home packages, cedar home packages, or similar packages.

4.03 Landscaping: All lots shall be properly cared for at all times so as to maintain a good appearance to the public view, to provide a vegetation cover, and to avoid erosion and dust. The owner of each such lot, upon erecting a single family residence or other approved structure thereon, shall provide and maintain native and natural landscaping on the rear and side portions of the lot as well as the front lot area. All disturbed areas shall be re-established with native vegetation. Fire wise landscaping practices shall be followed, to the extent reasonably practiced.

4.04 Long-term Fire Protection Maintenance: Vegetation encroachment within the 100' zone of each structure will be reduced annually during a community workday or by a professional contractor hired by each Home Owner. Woody debris will be collected each spring and removed to an approved facility. No open fires will be allowed during the closed burn season (May 10 - October 20). To maintain good forest health removal of dead and dying materials will be practiced.

4.05 Lighting: All outdoor lighting shall be placed in such a manner and be of such a kind that it will not project light horizontally, so that no bright or glaring light shall be obvious within the development.

4.06 Animals: Except as hereinafter provided, no animal, livestock or poultry of any kind shall be raised, bred or kept on any lot other than dogs, cats or other domestic pets, provided that the same are not kept, bred or maintained for commercial purposes.

4.07 Garbage, Refuse Disposal: No parcel shall be used or maintained as a dumping ground for rubbish, trash, junk or other waste materials. All such waste of this nature must be kept in sanitary containers out of sight of the street and secure from access by domestic or wild animals and must be removed from the parcel at least once each week. All containers for the storage or disposal of such waste material shall be maintained in a clean and sanitary condition at all times. No burning of any household garbage, trash or other noxious refuse shall be permitted on any lot.

4.08 Vehicle and Maintenance Storage: Except as otherwise provided in this section: all snowmobiles, boats, boat trailers, travel trailers, camper trailers, motor homes, automotive campers or any other similar property stored on any lot shall be stored on the rear portion of such lot, and, if such storage is intended to be of a permanent nature, said property shall be stored in an enclosed building, and, none of the aforementioned items shall ever be parked in the front yard of any lot, nor on the streets of the Subdivision for more than three consecutive (3) days.

- A. Non-Permanent Recreational Vehicles: Owners, visitors and guest may park a camper, motor home or trailer in the Subdivision for a reasonable term, not to exceed 21 days duration nor more than a total of one hundred and fifty (150) days each calendar year, except with special written permission from all Owners.
- B. Parking: Adequate space shall be provided on each lot for off-street parking of all the owner's personal automobiles.



Building Materials: No building materials of any kind shall be placed or stored upon any lot until the owner thereof is ready and able to commence construction, and then such materials shall be placed and kept neatly within the property lines of such lot, and shall not be stored for longer than ninety days.

- D. **Non-operating Vehicles:** Non-operating vehicles shall not be stored or parked on any lot for more than three (3) days.

4.09 **Utilities:** All electrical power lines, telephone lines and other utility service lines shall be underground to each individual parcel line to the point of use on each parcel. Overhead lines and utility poles shall not be permitted, except temporary poles during the construction phase.

- A. **Electrical:** Electrical power service to the Community as a whole shall be provided from the right of way (ROW) on the road without easement requirements. The purchaser and owner of each parcel agrees to use the service provided in the ROW; and, shall be responsible for all required hook-up fees and cost for bringing the electrical line from the road to the building site. Private electrical generating systems shall not be permitted for domestic electrical service, except as a backup system in case of primary electrical failure. If applicable, Lot 1 and Lot 2 Owners must each acquire one vested share of the power line in the ROW from Idaho Power within 6 months of purchase.
- B. **Water:** Water for each Lot shall be supplied by means of individual wells, installation and maintenance of which shall be the sole and exclusive responsibility of the Lot Owners; and, each well shall be located a minimum distance of 50 feet from any sewer line and shall otherwise comply in all respects with the regulations and health standards of any government entity having jurisdiction thereof.
- C. **Sewer:** North Lake Recreational Sewer and Water District (NLRSD) shall supply Sewage disposal for each Lot. The main sewer line is provided to the Community as a whole from Franks Road. The purchaser and owner of each parcel agrees to use the service so provided; and, shall be responsible for all required hook-up fees and bringing the sewer line from the sewer stub to the building site.

4.10 **Fences:** No fence, wall or hedge higher than four (4) feet, six (6) inches shall be erected or maintained on said lots or any portion thereof. Fences shall not interfere with snow removal from any street within the Subdivision.

4.11 **Wood Burning Appliances:** All wood burning appliances installed by or for owners shall be EPA approved and meet EPA standards regarding particle emissions. Each Lot shall be limited to no more than one Wood Burning appliance.

4.12 **Noxious Weeds:** Any lot disturbed as a result of grading or construction shall be re-vegetated to its original or improved state no later than one construction season after being disturbed. Additionally, each Owner shall follow the guidelines provided in the Valley County Comprehensive Noxious Weed Management Plan.

4.13 **Productive Forestry:** Some of the land within the community may be designated as productive forestry. Subject to the compliance and approval of Valley County Assessor's Office.

4.14 **Off Road Vehicles:** Off Road Vehicle use will be restricted to ingress and egress from Lots.

4.15 **Noise:** Obnoxious levels of noise and vibration will be prohibited.

ARTICLE V ASSESSMENTS

5.01 **Covenant to Pay Assessments:** By Acceptance of a deed to any lot in the Property each Owner of such Lot hereby covenants and agrees to pay when due all Assessments or charges, including all Regular or Special Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.



Assessment Constitutes Lien: Such Assessments and charges together with annualized interest, not exceeding 10%, costs and reasonable attorneys fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the lot against which each such Assessment or charge is made.

- B. **Assessment in Personal Obligation:** Each such Assessment, together with annualized interest, not exceeding 10%, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for the delinquent Assessments shall remain such Owners personal obligation regardless of whether he remains an Owner.

5.02 **Regular Assessments:** The regular assessments may include, and shall be limited to, the following regular expenses:

- A. Repairs and maintenance for Fire Suppression Water System and Easements benefiting the Property Owners;
- B. Snow Removal and maintenance to Franks Road, but not to include individual owner's driveways;
- C. Any deficit remaining from any previous assessment year;
- D. Any management or service expenses associated with administrating the assessments and their fees.

Regular assessments shall be paid annually as provided in section 5.07.

5.03 **Maximum Regular Assessments:**

- A. The assessment will be prorated for Lot Owners in the year of purchase, based on the remaining expenses in Section 5.02 that are expected to occur.
- B. Effective January 1st, 2021, and for each subsequent year thereafter until the transfer of the control date has occurred, assessments shall be set by the Declarant, as necessary to meet the subdivisions financial needs and pursuant to the terms and restrictions of this Article.
- C. Effective with the transfer of control from the Declarant to all the Owners, then the annual regular assessment may be increase with written approval of fifty-percent of the Owners, by a sum not to exceed twenty percent (20%) of the prior year's regular assessment. Any increase in the regular assessment that exceeds twenty percent (20%) of the prior year's regular assessment shall require the written approval of sixty-five percent of Owners.

5.04 **Regular Assessment Procedure:**

- A. The Owners shall set the total annual regular assessment based upon an advanced budget of requirements for the following assessment year. A summary of that budget shall be mailed by ordinary first class mail or otherwise delivered to all Owners by no later than December 1 of the current budget year (i.e. to take effect on January 1 of the next assessment year). Subject to the written approval requirements for any increase in the annual regular assessment that exceeds twenty percent (20%) of the prior year's regular assessment, the budget shall take effect on January 1 of the assessment year to which it applies.
- B. The Owners shall cause to be prepared, delivered, or mailed to each Owner, at least thirty (30) days in advance of the date of payment is due, a payment statement setting forth the annual regular assessment. All payments of regular assessments shall be due and payable without any notice or demand, on the due dates declared by the Owners. Each owner shall become responsible for the regular assessment as of the date the Lot is transferred to such owner.

5.05 **Special Assessment:** In the event that the Owners shall determine that its Regular Assessments for a given calendar year is or will be inadequate to meet the Expenses of the Community for any reason, including but not limited to attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Owners shall determine the amount necessary to defray such Expenses and levy a Special Assessment which shall be computed in the same manner as Regular Assessments. After the transfer of control, no Special Assessment shall be



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levied without the vote or written consent of a majority of the votes of the Owners of the Community. The Owners shall, in their discretion, determine the schedule under which such Special Assessment will be paid.

5.06 Uniform Rate of Assessment: Unless otherwise specifically provided herein, regular and special assessments shall be fixed at a uniform rate per Owner (Co-owner's constitute as 1 Owner), not per Lot, for all Owners of the Community.

5.07 Assessment Period: The Assessment period shall commence on January 1 of each year and terminate December 31 of the same year.

5.8 Notice of Default and Acceleration of Assessments: If an assessment is not paid within thirty (30) days after its due date, the Owners may mail a notice of default to the Owner. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the assessment against the Lot of the Owner in default, and the exercise by a majority of the Owners in the community of any other remedies either provided herein or allowed by law. In such case, and as a condition of the cure of the delinquent assessment, the delinquent Owner may be obligated, with written approval of a majority of Owners in the Community, to additionally pay all cost of enforcement, including without limitation reasonable attorney's fees, cost and related expenses and to pay a reasonable late charge to be determined by a majority of Owners in the Community.

ARTICLE VI ENFORCEMENT OF ASSESSMENTS; LIENS

6.01 Right to Enforce: Each Owner is and shall be deemed to covenant and agree to pay each and every assessment provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the delinquent owner agrees to pay reasonable attorney fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against delinquent Owner. In addition to any other remedies herein or by law provided, the Owners in the Community, or its authorized representative, may enforce the obligations of the delinquent owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law in equity.

ARTICLE VII DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

7.01 Period of Declarant's Rights and Reservations: Except where a different period of duration is specified, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Owners properties until the Transfer of Control Date, defined at Section 7.02,C. The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance of the Property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights, reservation and easement hereinafter set forth shall be prior and superior to any other provisions, and may not, without Declarant's written consent, be modified, amended or rescinded or affected by any amendment. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

7.02 Declarant's Development Rights: For the period stated in Section 7.01, Declarant shall have the following development rights:

- A. Declarant may withdraw any portion of the real estate contained within the Existing Property, as described in Exhibit "A" attached hereto, from the Existing Property and release such withdrawn property from the provisions of this Declaration.
- B. Assessments shall be set by the Declarant, as necessary to meet the subdivisions financial needs and pursuant to the terms and restrictions of this Article. The Declarant's Assessment rights shall terminate upon the occurrence of the first of the following events:



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- a. By written notice from the Declarant to the existing Owners of the Declarant's intention to terminate their right to set and manage the Assessments of the Existing Property.
- b. Upon that date which is *sixty (60) days* after at least *fifty percent (50%)* of all lots within the Property have been sold to persons other than the Declarant.

**ARTICLE VIII
GENERAL PROVISIONS**

8.01 Binding Effect: The various restrictive measures and provisions of these covenants and restrictions are declared to constitute mutual equitable servitude for the protection and benefit of each parcel in the Community and of the Owners thereof and for the benefit of the Community as a whole. Each grantee of a conveyance or purchaser under a contract of sale, by accepting a deed or contract of sale, accepts such subject to all of the covenants, conditions and restrictions set forth in this Declaration and specifically agrees to be bound by each and all of them. Furthermore, each such person acknowledges that the area surrounding the property is rural in character and that its present and future uses do and may include farming, aerial spraying, ranching, logging, hunting, fishing, and generally all kinds of outdoor activity, including use of trail or ATV vehicles.

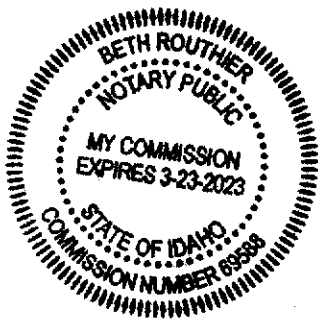
8.02 Term and Amendment of Declaration: the covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of forty (40) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years. An instrument approved in writing, by not less than two-thirds of the total Owners, may amend this Declaration.

8.03 Effect of Security Interest: None of the provisions of this Declaration shall in any way reduce the security of defeat or render invalid the lien of any mortgage or the title held under any deed of trust now or hereafter replaced on any part of the Community. If, however, any portion of the said property is sold under foreclosure of any mortgage or deed of trust or the power of sale therein, the party acquiring title at such foreclosure or sale and his successors shall hold all property so acquired subject to all the terms and conditions hereof.

8.04 Severability: Invalidation of any one or more of the covenants, conditions and restrictions contained herein by judgment or otherwise shall in no way affect the validity of any of the other provisions, which shall remain full force and effect.

8.05 Application of Declaration: The provisions of this Declaration shall apply to all parts of the Community, where applicable, and not to just the parcels, and shall further apply to all persons (not just the owner) of any part of the Community property. It shall be the responsibility of the owners of the subject parcels within the community to make sure that their guest or tenants, if any, are fully aware of and abide by all of the conditions set forth in this Declaration at all times.

IN WITNESS WHEREOF, said Declarant has executed this Declaration on this First Day of January, 2021.



By: Michael Montford
Michael Montford, Montford Family Living Trust Trustee

By: Terra Montford
Terra Montford, Montford Family Living Trust Trustee

County of ADA, State of Idaho

Feb 10, 2021

Beth Routhier, Notary Public