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**Instrument # 461554**

VALLEY COUNTY, CASCADE, IDAHO

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Recorded for : RALPH MILLER

DOUGLAS A. MILLER

Fee: 34.00

Ex-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

**After Recording Return to:**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**HIDDEN VALLEY SUBDIVISION**

(Lots 1 and 2)

**THIS DECLARATION** made on the date hereinafter set forth by Edward Clay Szeliga, hereinafter referred to as "Declarant".

**WITNESSETH**

I.

Declarant is the owner of certain property in Valley County Idaho more particularly described as:

Lots 1 & 2 of the Hidden Valley Subdivision, according to the official plat thereof recorded in the real property records of Valley County, Idaho, as Instrument No. 461552.

II.

Declarant is in the process of dividing the above-described property into two parcels, and has received preliminary approval for said subdivision – Valley County C.U.P. 21-44, Hidden Valley Subdivision.

III.

Declarant deems it desirable in furtherance of the purposes set out herein to establish these covenants and restrictions which shall apply to all real property contained in the development.

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

## **ARTICLE I Definitions**

**"Owner"**: Shall mean and refer to the record owner, including contract purchasers, whether one or more persons or entities, of the fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**"Properties"**: Shall mean and refer to that certain real property hereinbefore described.

**"Lot"**: Shall mean and refer to any plot or parcel of land shown on any recorded subdivision map of the properties.

**"Plat"**: Shall mean that certain Plat recorded on February 8, 2023<sup>2024</sup>, as Instrument No. 461552, with the Valley County, Idaho Recorder and entitled "Hidden Valley Subdivision," as the same may be amended.

## **ARTICLE II General and Specific Obligations and Restrictions**

The Lots in the Hidden Valley Subdivision may be used for all lawful purposes subject to the following restrictions:

**2.1 Compliance with Laws**: All activity within the Hidden Valley Subdivision shall comply with the laws and ordinances of the United States of America, the State of Idaho, and Valley County.

**2.2 Nuisances**: No noxious, illegal, or seriously offensive activities shall be carried on or upon any Lot, or any part of Hidden Valley Subdivision, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to any Owner, or which may in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Lot(s).

**2.3 No Single-wide Manufactured Homes**: Single-wide manufactured homes shall not be allowed as a permanent residence on the property.

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February 8

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**2.4 No Storage/Junk Yard:** No owner shall store inoperable motor vehicles or equipment on their Lot. All vehicles and equipment on a Lot shall be limited in number and stored in a manner that is not objectionable to a reasonable owner of any Lot in the Hidden Valley Subdivision.

**2.5 Lighting:** All exterior lights shall comply with the Valley County Lighting Ordinance (Title 6, Chapter 2), any requirements established by the FAA, the City of McCall, or other jurisdiction having authority, and must comply with the Avigation Agreement described in Article III, below.

**2.6 Wildfire Prevention:** Each owner shall take reasonable measures to mitigate wildfire on their Lot. Such measures may include re-vegetation of native grasses, installation of sod and other appropriate landscaping, and grading to improve upon existing pastureland conditions. Other wildfire prevention measures for the subdivision include:

**2.6.1 Wood Burning Device Limits:** Each Lot in the Hidden Valley Subdivision is limited to one wood burning device.

**2.7 Noxious Weeds:** Each owner shall prevent and eradicate any noxious weeds on their Lot. Owners are hereby notified that neglect or failure to control noxious weeds may lead to enforcement by Valley County pursuant to County Code of Valley County Idaho, Title 3, Chapter 3.

**2.8 Sewage Disposal Systems:** Sewage disposal for each Lot shall be supplied by means of individual septic/drainfield systems. Permits therefore shall be required from Central District Health Department. Installation and maintenance of said systems shall be the responsibility of each individual Lot owner. Helpful information for the proper installation and maintenance of septic systems can be found at the Idaho Department of Environmental Quality's website: [https://www.idahopublichealth.com/environmental/septicystems/474190-septic\\_homeowners\\_guide.pdf](https://www.idahopublichealth.com/environmental/septicystems/474190-septic_homeowners_guide.pdf), and in the central district health brochure found at: [https://www.cdhd.idaho.gov/pdfs/eh/septic-systems-and-drainfields\\_2018.pdf](https://www.cdhd.idaho.gov/pdfs/eh/septic-systems-and-drainfields_2018.pdf).

**2.9 Address Numbers:** Each owner must place addressing numbers in a clearly visible location at the entrance of the driveway to their Lot and on or near their residential dwelling.

### **ARTICLE III FAA Regulations and Compliance**

**3.1 Notice and Compliance with Airport Conditions.** Each Owner is hereby notified that each Lot exists within designated FAA flight paths and controlled air space. Accordingly, each Lot may be limited as to building height and location, and no

improvements can be constructed on a Lot without prior approval from jurisdictions having authority thereover. Each owner must abide by all FAA and City of McCall requirements relating to the operation of the McCall Municipal Airport.

**3.2 Form 7460-1 Required.** At least forty-five (45) days prior to any new construction activity an Owner must submit FAA Form 7460-1 to the FAA's Obstruction Evaluation Group. Further information and the form can be found at:

<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

**3.3 Soundproofing Required.** Each Owner must install soundproofing within their respective dwellings to mitigate against noise exposure from the McCall Municipal Airport and its associated flight paths. The FAA provides guidance for such soundproofing through its Airport Noise Compatibility Planning under 14 CFR Part 150.

**3.4 Lighting Requirements and Limitations.** The City of McCall and the FAA may require certain obstruction lighting for improvements constructed on each Lot. Further, certain lighting, such as directional or upward facing lights, may be prohibited on each Lot.

**3.5 Avigation Easement.** All Lots in the Hidden Valley Subdivision are subject to that certain McCall Municipal Airport Surface and Overhead Avigation Easement and Right of Way, a copy of which is attached hereto as **Exhibit A**.

#### **ARTICLE IV PIPER PLACE AND ACCESS EASEMENT**

**4.1 Access for Lot 1.** Lot 1 shall be accessed from Piper Place, a private right of way. The owner of Lot 1 shall be solely responsible for the maintenance and upkeep of Piper Place unless the owner of Lot 2 elects to construct a home on Lot 2, at which time the provisions of 4.3, below, shall control the maintenance and upkeep of Piper Place.

Lot 1 shall also have access off of the roadway constructed on its southern boundary, subject to the restrictions contained in the Declaration of Access Easement, as recorded with the Office of Recorded of Valley County, Idaho, Instrument No. 429032.

**4.2 Access for Lot 2.** Access to Lot 2 shall be along the roadway constructed on the southern boundaries of Lot 1 and Lot 2, subject to the provisions of the Declaration of Access Easement, as recorded with the Office of Recorded of Valley County, Idaho, Instrument No. 429032.

**4.3 Driveway and Utility Easement Depicted on Plat:** The driveway and utility easement across Lot 1 depicted on the Plat shall benefit Lot 2, however it shall only be used for a driveway and utilities to access any home(s) built on Lot 2. If any home(s) is built on Lot 2 and the depicted easement is utilized, the following shall apply:

4.3.1 The easement granted shall be non-exclusive and shall run with the land.

4.3.2 The owner of Lot 2 shall be responsible for all construction and maintenance of the driveway, and shall ensure that the construction and maintenance thereof shall be done in a manner that is least disruptive to Lot 1 as possible. The owner of Lot 2 shall give the owner of Lot 1 60 days advance, written notice of its intent to utilize the Driveway and Utility Easement, and shall coordinate all construction activities with the owner Lot 1 as fully as is reasonably possible.

4.3.3 Section 4.3.3 notwithstanding, any damage or maintenance incurred as a result of use by the owner of Lot 1 shall be the responsibility of the owner of Lot 1.

4.3.4 The owner of Lot 2, on behalf of its heirs, successors, assigns, purchasers, or transferee of any kind, covenants and agrees to indemnify, defend and hold harmless the owner of Lot 1 from any loss, claim, or other liability of any nature (including attorney fees and costs) that may result directly or indirectly from any use of or improvement to the easement granted herein, and shall purchase and maintain at all times a liability insurance sufficient to cover said obligation.

4.3.5 The owners of Lot 1 and 2 shall be equally responsible for the maintenance and upkeep of Piper Place. No owner shall impact the use of Piper Place by another owner, and shall ensure that snow plowing of their driveways shall not result in the obstruction of Piper Place.

## **ARTICLE V General Provisions**

**5.1 Enforcement:** Any affected Owner of a Lot in the subdivision shall have full rights to enforce the covenants and restrictions contained herein. No failure to prosecute any person for any violation or attempted violation shall be deemed a waiver of a right to enforce any such violations by the same person or other persons. The prevailing party shall be entitled to recover costs and a reasonable attorney's fees, both trial and appellate, in any such proceeding.

**5.2 Conflict:** In the case of conflict between these restrictions and any zoning ordinance of any governmental body, the more restrictive shall prevail.

**5.3 Severability:** Invalidation of any part of the restrictions shall in no way affect the remaining restrictions.



December

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Recording Requested By and  
When Recorded Return to:

City Clerk  
City of McCall  
216 East Park Street  
McCall, Idaho 83638

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For Recording Purposes Do  
Not Write Above This Line

**MCCALL MUNICIPAL AIRPORT  
SURFACE AND OVERHEAD AVIGATION EASEMENT  
AND RIGHT-OF-WAY**

This Easement and right-of-way is granted to the City of McCall (hereinafter "City") and all future users of the McCall Municipal Airport (hereinafter "Airport") for the purposes of flight by EDWARD CLAY SZELIGA (hereinafter "Grantor") without any duress or coercion. It is supported by good and valuable consideration, the sufficiency of which is acknowledged by Grantor. This Easement shall be effective upon the recording of the Final Plat for the Hiden Valley Subdivision, Valley County CUP No. 21-44. It is permanent and non-exclusive.

Grantor acknowledges that its property is located near a busy Airport which is important both to the City of McCall and users of the Airport. Grantor further acknowledges that the terms and conditions of this Easement are reasonable and are aimed at the continued safe use of the McCall Airport and its users. Accordingly, Grantor, for itself, its assigns and successors in interest grants the following appurtenant rights, conditions and benefits to the City of McCall and to all persons using the Airport without limitation to the time or frequency of use of the Airport:

1. The unobstructed use and passage of all types of aircraft in and through the Airport's airspace at any height or altitude above the

surface of Grantor's land described in Exhibit A which is attached hereto and is incorporated herein by reference. As used in this Easement, the term "aircraft" means devices designed to transport persons or property through the air including, but not limited to, those which are propelled by jet(s) or propeller, whether civil or military, commercial, public or privately owned. The term "aircraft" also includes sailplanes, gliders, lighter-than-air balloons and helicopters.

2. The right of said aircraft to cause noise, vibrations, fumes, deposits of dust, fuel particles (incidental to the normal operation of aircraft); fear, interference with sleep or communication, and any other effects associated with the normal operation of aircraft taking off, landing or operating in the vicinity of the Airport.
3. The right of said aircraft to utilize the Airport or the airspace surrounding it without respect to the frequency of use, the time of day or night, the height above the ground used by said aircraft, the type of aircraft and the proximity of flight near or over Grantor's property burdened by this Easement.

Grantor, on behalf of itself and its assigns and successors in interest, will, as a material part of this Easement provide a copy of this Easement to all of its assigns and successors in interest before the passing of title.

Grantor further expressly agrees for itself, its successors and assigns to restrict the height of structures, objects of natural growth and other obstructions on Grantor's Property to a height in compliance with Title 14 CFR Part 77, *Safe, Efficient Use and Preservation of the Navigable Airspace*, as amended from time-to-time, and to file with the FAA a Form 7460-1 when required by the United States Code of Federal Regulations.

This Easement and right-of-way additionally grants to Grantee the continuing right to prevent the erection or growth upon Grantor's Property of any building, structure, tree, machine or other object that extends into the airspace above said Property in excess of the heights allowed by the United States Code of Federal Regulations or objects or

structures which create glare, lights or reflectors which might interfere with a pilot's vision.

Grantor expressly agrees for itself, its successors and assigns to prevent any use of Grantor's Property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. Such hazards include uses that create electrical interference with navigational signals or radio communication between the Airport and aircraft, make it difficult for pilots to distinguish between Airport lights and other lights, result in glare in the eyes of pilots using the Airport, impair visibility in the vicinity of the Airport, create or build water features or ponds that are bird attractants which may cause bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the Airport.

Grantor and its successors and assigns does hereby fully waive damages, claims for damages and causes of action, including injunctive relief, which they may now have or which they may have in the future against Grantee and the Airport users due or alleged to be due to noise, vibrations, fumes, dust and fuel particles or any other condition or effect that may be caused or may have been caused by the lawful operation of aircraft landing at, taking off from or operating at, near or from the Airport.

TO HAVE AND TO HOLD said Easement and right-of-way, and all rights appertaining thereto unto Grantee, its successors and assigns, until McCall Municipal Airport shall be abandoned and shall cease to be used for public airport purposes. It is understood and agreed that all provisions herein shall run with the land and shall be binding upon Grantors, their heirs, administrators, executors, successors and assigns until such time that the Easement is extinguished.

NOTICES between the parties may be made by personal delivery or by United States mail, postage pre-paid, registered or certified, with return receipt requested, or by telegram, facsimile transmission or mail-o-gram or by recognized courier delivery (e.g. Federal Express, UPS, DHL, etc.) addressed to the parties, as the case may be, at the address set forth below or at such other addresses as the parties may subsequently designate by written notice given in the manner provided in this section. The parties are required to provide any change of address to each other.

**Grantee:** McCall Municipal Airport  
Attn: Airport Manager  
216 East Park Street  
McCall, Idaho 83638

**Copy To:** City of McCall  
Attn: City Clerk  
216 East Park Street  
McCall, Idaho 83638

**Grantor:** EDWARD CLAY SZELIGA  
200 Swiftwater Blvd  
Cle Elum, WA 98922



EXHIBIT A

**Legal Description:**

Parcel 27 as shown on survey 429001

A parcel of land situate in the SW1/4 NW1/4 and the NW1/4 SW1/4, Section 28, T. 18 N., R. 3 E., B.M., Valley County, Idaho, more particularly described as follows:

Commencing at a brass cap marking the Quarter Corner common to Sections 28 and 29, T. 18 N., R. 3 E., B.M., Valley County, Idaho, as shown on that particular Record of Survey, recorded as Instrument No. 365581, on Book 11, on Page 162 of Surveys, on file in the Office of the Recorder of Valley County, Idaho, the REAL POINT OF BEGINNING:

Thence, N. 0°27'25" E., 661.35 feet to the S-N 1/64th Corner common to said Sections 28 and 29,

Thence, S. 89°58'02" E., 35.00 feet to a 1/2" rebar,

Thence, continuing S. 89°58'02" E., 1,299.65 feet to a 5/8" rebar marking the C-S-NW 1/64th Corner of said Section 28,

Thence, S. 0°26'56" W., 411.10 feet along the easterly boundary of said SW1/4 NW1/4, to a 1/2" rebar, Thence, continuing S. 0°26'56" W., 21.17 feet along said easterly boundary to the centerline of the Clara Foltz Ditch,

Thence, S. 71°16'43" W., 455.40 feet along said ditch centerline,

Thence, S. 71°18'23" W., 392.59 feet along said ditch centerline,

Thence, 108.83 feet along said ditch centerline on a curve to the left, whose radius is 90.00 feet, delta angle is 69°17'06", and whose long chord bears S. 36°39'50" W., 102.32 feet,

Thence, N. 89°56'14" W., 20.00 feet to a 1/2" rebar,

Thence, continuing N. 89°56' 14" W., 418.27 feet to a 1/2" rebar,

Thence, continuing N. 89°56' 14" W., 35.00 feet to the westerly boundary of said NW1/4 SW1/4,

Thence, N. 0°27'43" E., 125.25 feet to the Point of Beginning.

Bearings based on GPS derived State Plane Grid Azimuth, Idaho West Zone (1103).