

After Recording Return
To:
IMEG Corp
1817 South Ave. W.
Suite A
Missoula, MT 59801

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MISSOULA LOFT HOMES ON MARY JANE SUBDIVISION

This Declaration is made this _____ day of _____, 20____ by Missoula Lofts LLC, 2502 River Road, Tucson, AZ 85718 and provides as follows:

RECITALS

- A. Missoula Lofts LLC ("Declarant" herein) is the owner of certain real property located in the City of Missoula, Missoula County, State of Montana, which is more particularly described as follows:

Tract 2 and 5 of Certificate of Survey 6817 being located in the northwest one-quarter (NW1/4) of Section 18, Township 13 North, Range 19 West, Principal Meridian Montana, Missoula County, Montana

Said property is being subdivided and the following subdivision will be identified as being:

MISSOULA LOFT HOMES ON MARY JANE SUBDIVISION

The "Real Property" herein.

- B. The Declarant wishes to place restrictions, covenants and conditions upon the Real Property for the use and benefit of the Real Property, the Declarant, and the future owners of the Real Property.

C. THEREFORE, the Declarant hereby declare that all of the Real Property shall be held, sold, conveyed, and hypothecated subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a residential development. These restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or acquiring any right, title or interest in the Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof, whether or not this Declaration is identified in any subsequent grant of Real Property identified herein.

ARTICLE I: DEFINITIONS

1. Common Area. There are no plans to have any amenity or open space area associated with this development held in common ownership. Any common areas or open spaces with these amenities associated with the multi-family, for rent, development component of this proposal will be held in private ownership and managed by a property management company. See below for maintenance information on these areas. Missoula Loft Homes On Mary Jane Subdivision and the roads or streets serving said subdivision are to be dedicated and granted to the City of Missoula. No common area shall preclude the creation and existence of easements and easement areas for use by the properties and owners within Missoula Loft Homes On Mary Jane Subdivision. Nothing herein precludes the further creation of common

areas in or on individual Lots upon future development.

2. Declarant. “Declarant” shall mean and refer to Missoula Lofts LLC. and their successors and assigns if such successors or assigns should acquire a majority of the undeveloped Lots from the Declarants for the purpose of development. Throughout this Declaration certain rights and privileges may be reserved to the Declarant and not to residents.

3. Declaration. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

4. Lot. “Lot” shall mean and refer to any plot of land designated as a Lot upon the recorded plat map of the Real Property or as will be shown upon the recorded plat map of future phases of the Real Property, subject to this Declaration, inclusive of private roadways or access shown as easements across the Lots.

5. Owner. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities of any Lot which is a part of the Real Property, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of an obligation.

6. Real Property. “Real Property” shall mean and refer to that certain Real Property as described in the Recitals above, and such other Real Property as is now or may hereafter be brought within and governed by this Declaration.

7. Property Management Company. “Property Management Company” shall mean and refer to a professional property management company hired by the Declarant for sole purpose of protecting the value and desirability of the Real Property and the Lots, to further a plan for the improvement of the Real Property and the Lots for the mutual benefit of future residents, to create a harmonious and attractive development conducive to multifamily, residential uses of property, and to promote and safeguard the health, comfort, safety, convenience, and welfare of future residents. They will be the responsible party for maintenance of recreational and other shared facilities. There are no pro rata association costs for the Property Management Company. The Property Management Company shall have employees and be subject to the terms of a rental agreement with each resident. The Declarant shall engage a professional property management company to oversee the overall property management to including, but not limited to, the following:

- a. full-time staffing, as necessary, to provide all leasing, business management, and in-house maintenance;
- b. annual grounds management contracting activities, such as grass mowing, turf treatment, landscape bed maintenance, and snow removal. Such contracting activities shall be funded by the Declarant;
- c. all exterior and interior maintenance for the clubhouse and exterior amenities (i.e. pool); and
- d. all exterior and interior maintenance for the residential buildings.

Quarterly and annual property inspections shall be performed by the Declarant with a long-term capital improvement plan being developed on a rolling ten-year basis. Additionally, a capital improvement escrow shall be funded, monthly, upon permanent debt being placed on the Real Property.

ARTICLE II: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the Real Property. They shall constitute a covenant running with the land for each Lot, parcel or common area within the Real Property.

1. Land Use and Building Type. All Lots shall be used and developed for residential purposes. No business, trade, or manufacture, as further defined in paragraph 3 of this Article II, shall be conducted on any Lot. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than residential dwellings and accessory dwelling units, and related, permitted outbuildings or storage sheds. No building or structure shall be built, modified or altered, upon any Lot until the plans and specifications of the proposed building or structure, including any modifications or alterations thereto, have been approved pursuant to Design Review. Provided, in the event of subsequent development and division of individual Lots, such Design Review as referenced herein is deemed waived if the standards in this Declaration are met, and such subsequent development provides for building standards and architectural review. No mobile or manufactured home may be placed or installed on any Lot. All architectural restrictions will adhere to both building and fire code for the City of Missoula.

Permitted development of the individual Lots may include, in addition to the above, additional division or subdivision of the Lots pursuant to the Montana Unit Ownership Act, or further subdivision as allowed by law. Such further divisions are identified herein as "Ownership Unit(s)" regardless of the mechanism for their creation. All future divisions under the Unit Ownership Act will include owners associations which shall generally be responsible for the maintenance of common areas, features, and elements, and include covenants, conditions and restrictions which must meet the requirements of this Declaration, but may be more restrictive.

Dwelling height, setbacks, access, parking, and other such building standards shall otherwise comply and compost with City of Missoula zoning and building codes, or such standards as may be set out in the declarations for individual development under the Unit Ownership Act.

No log homes or other log buildings or structures are permitted. Any steps or stairs on the front exterior of any building or structure shall be constructed of concrete, stone, brick, wood, or other similar material. All buildings or structures shall be constructed of new materials and must utilize a concrete foundation. However, suitable used material such as bricks or beams may be utilized for accent or decorative features. No old buildings or structures, whether intended for the use in whole or in part as the main dwelling house or as a garage or other building or structure shall be moved upon any Lot. No mobile homes, either double or single wide, or other manufactured or modular homes constructed primarily away from the Lot on which they would be situated, shall be permitted.

2. Outbuildings. Outbuildings shall be as provided for in the covenants pertaining to subsequent divisions of the Lots, and nothing herein shall be deemed to prevent the construction of any outbuilding used for storage that may be required by local code or regulation. No metal buildings or outbuilding may be constructed, placed, or erected on any Lot.

3. Commercial Usage Prohibited. Except as is otherwise permitted by this paragraph, no store, office, business, manufacture, retail, or commercial enterprise of any kind, or anything of the nature thereof, shall be carried on or conducted on any Lot. For a period of fifteen (15) years from the date of this Declaration, the Declarant and Declarant's successors and assigns further developing or building out a particular Lot, shall be permitted to maintain a sales office in either a model home or a specially constructed building, to be utilized to promote the development of the Real Property. Home occupations are allowed so long as all activity comprising such home occupation takes place within the dwelling; has no effect on the traffic traveling into and out of the neighborhood, which comprises the Real Property; and has no perceptible affect on the noise, smell, and aesthetics of the Real Property.

4. All home occupations are also subject to all applicable zoning and other restrictions imposed by the City of Missoula, the State of Montana, or any other applicable

governmental agency.

5. Building Site and Driveways. Building locations in subsequent development shall not interfere with any stormwater detention facility located on a Lot or subsequent Ownership Unit, and the same shall generally be the maintenance responsibility of the specific association responsible for maintenance of such common features or elements. To waive any setback, any prohibition of building activity in a designated flood plain area, or any other restriction on building site that may show on the face of the plat, inclusive of any designated No Build/No Disturbance Zone.

All driveways and private roadways within the Real Property shall be paved with either asphalt or concrete. The use of paving blocks or permeable surfaces for an individual dwelling's parking areas may be permitted under the subsequent development standards, provided the use of such materials is subject to architectural review, and such review includes a requirement that such alternate paving is professionally installed.

6. Setback Lines. Setbacks shall be in accordance with applicable zoning regulations and pursuant to development standards for subsequent development, or as may be shown on the face of the plat.

7. Temporary Structures. No building or structure of a temporary character, mobile home, trailer, tent, shack, garage, barn, or other outbuilding shall be used at any time as a residence, temporarily or permanently, nor shall any building be occupied for residential purposes until it is completely finished and certified or approved for occupancy.

8. Fences. All subsequent further development shall include regulations addressing fencing, and no fencing may impair sight lines at any road or driveway intersection. Fencing is permitted to provide privacy or safety for any play area, patio, pool or rear yard but shall not be constructed closer to a street line than the front building line of the dwelling on the Lot. No fence shall exceed five (5) feet in height. Such fence may be constructed of metal, cedar or redwood, and/or black, coated, chain link fencing. Wood fencing should generally not be of a closed board design; provided, fencing of the perimeter of a Lot may be constructed of a solid material or closed board design, again being no closer to the fronting street than the front of the building, and provided such fencing may not block or interfere with provided parking.

9. Grade of Lawn. All dwellings shall include a finished lawn grade so as to have positive drainage away from the building.

10. Common Areas. Any subsequent development of a Lot that includes or creates common area that is to be used as a recreation area or open space shall include landscaping of such space, which shall be completed within nine months of the beginning of construction of dwellings.

11. Easements. Easements for access, ingress and egress, installation and maintenance of utilities and drainage facilities, inclusive of any drainage catch basins, are reserved as shown on the recorded plat. Additional separately recorded easements will be anticipated for the development of individual Lots or Ownership Units, and such all subsequent owners of such Lots or Ownership Units agree to cooperate in the creation and development of such easements, which may include easements for utilities of any type or nature, and also private access roads and/or alleyways. No building of any kind shall be erected, placed, or permitted to remain on such easements, and landscaping in any area designated as a stormwater or drainage catch basin shall be appropriate to such use and not otherwise interfere with such area's use as a stormwater catch basin.

12. Boundary Control Monuments. The Declarant has caused survey monuments to

be placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot (or the owners association in the instance of development under the Unit Ownership Act) to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from the Lot.

13. Garbage. No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on a regular basis. The preceding does not preclude the storage of construction materials on the Real Property, nor does this provision does not prohibit temporary storage of gravel, topsoil, or building materials on Lots if such items are to be used in further construction. All subsequent development or division of Lots under the Unit Ownership Act or otherwise shall have covenants and restrictions governing garbage, container locations, and require regular pick up service Lots shall require the owner to retain, pay for, and have regular(at least weekly) garbage service, and provision of adequate garbage facilities and container or containers to serve all tenants or residents of such improvements. The garbage container or containers may be located on the Lot in a location convenient for collection, but must screened. Such containers must also have a sufficient tight fitting lid to deter the escape obnoxious odors, and deter entrance by animals. Compost piles are prohibited on all Lots.

14. Animals and Pets. All subsequent development or division of Lots under the Unit Ownership Act or otherwise shall have covenants and restrictions governing animals and pets. No owner, tenant, resident, or guest shall allow any animal to be at large on the Real Property, and all owners of such animals shall be responsible for the immediate clean up of animal waste. Such animals shall not be permitted to become a nuisance or annoyance to the neighborhood nor to wildlife. All animals kept on any Lot shall be properly fed, watered, and sheltered from the elements in such a manner as shall be consistent with their good health, and shall not be left outside overnight. Wild animals are inhabitants of the area. Pet food should be kept indoors. Each owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. No commercial sales or breeding of any animals shall be permitted.

15. Vehicles and Parking. All subsequent development or division of Lots under the Unit Ownership Act or otherwise shall have covenants and restrictions governing vehicles and parking. There shall be no assembling, repairing or disassembling of vehicles in the street or upon any Lot, unless conducted indoors inside a garage. No mobile homes, trailers, trucks exceeding one (1) ton capacity, unsightly vehicles, or vehicles without current licensing shall be parked or allowed to remain on any of the Lots or the adjoining streets or driveways unless stored in a garage. These provisions are not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services on or for the Lot.

Other City of Missoula parking restrictions may apply to the streets within the Real Property. In no event may vehicles be parked on a street during snow removal periods, when snowplows may be active.

16. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot or Ownership Unit. However, exceptions shall be allowed for one small sign identifying the contractor of a building under construction, one small "For Rent" or "For Sale" sign per Lot or each subsequently developed unit, or temporary small signs advertising a garage sale. For the purposes of this Declaration, small is defined to mean no larger than two feet by three feet in size. Political signs comporting with the size requirement herein are allowed for a time period 60 days prior to the election to which said political sign pertains. Such political signs must be removed immediately following such election. For a period of fifteen (15) years from the date of this Declaration, the Declarant shall be permitted to place signs within the Real Property to promote its development.

17. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any of Lot or Ownership Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; nor shall any premises be used in any way or for any purpose which may endanger the health or safety of any resident or which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to or waste of the Real Property or any building situated thereon, shall be committed by the owner or any invitee of any owner, and each owner agrees to indemnify and hold harmless other owners from and against all loss resulting from any such damage or waste caused by him or his invitees.

18. Wood Burning Devices. No wood burning devices of any type shall be permitted or used in any residential building or structure erected upon any Lot in the Real Property. This specifically includes, but is not limited to, fireplaces, wood burning stoves, pellet stoves, fireplace inserts, or similar devices. High efficiency pellet stoves may be allowed as permitted by the appropriate governing body.

19. Sanitary Restrictions. The owners of every Lot, and all subsequently divided or created parcels or units shall comply with all laws and regulations relating to water supply, sanitation, sewage, disposal, and air pollution. All habitable improvement shall be connected to public or municipal sewer and water.

20. Weed Control. The owner of each Lot or Ownership Unit which is not in immediate development or does not have improvements being constructed thereon is responsible to maintain such owner's Lot or Ownership Unit in compliance with the Montana's Noxious Weed Control Act, and the attached Exhibit A Weed Management and Revegetation Plan. Owners shall revegetate any ground disturbance created by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is complete, pursuant to the Exhibit A Plan. This provision may not be amended or deleted without governing body approval.

21. Radon Mitigation. The EPA has designated the Missoula area as having a high radon gas potential (Zone I). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features.

22. House Numbers. Each dwelling shall have house numbers which are clearly visible from the street in all lighting conditions, which should be at least six inches in height, and shall contrast from the background color.

23. Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, moose, bear, mountain lion, coyote, fox, skunk and raccoon. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems.

Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

- b. Gardens, fruit trees or orchards can attract wildlife such as bear and deer. Fruit bearing trees and shrubs are strongly discouraged in this subdivision because they can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a “concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- d. Garbage must be stored in secure, bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and dogs. If stored indoors, do not set garbage cans out until the morning of garbage pickup, and bring cans back indoors by the end of the day. (Contact FWP for information on obtaining or building bear-resistant trash containers or structures.)
- e. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. And in turn, keeping pets confined helps protect them from being preyed upon by wildlife. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- f. Pet food must be stored indoors, in enclosed sheds or in animal-resistant containers in order to avoid attracting wildlife such bear, mountain lion, skunk, raccoon, etc. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- g. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- h. Consider boundary fencing (except as otherwise provided for herein) that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- i. Bird feeders attract bears and are strongly discouraged annually from April 1st through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- j. Compost piles can attract skunks and bears and are prohibited unless kept

indoors.

24. Agricultural Operations. Owners are notice that agricultural operations may exist adjacent to or in the vicinity of the plat. Such operations may produce exposure to odors, dust and noise, exposure to hazards such as irrigation ditches, ponds, fencing, and livestock protection methods, and the use of agricultural chemicals and farm equipment. Owners should be aware of impacts on such agricultural operations, including, but not limited to trespass on adjacent agricultural properties, failure to keep pets contained on an Owners Lot or Ownership Unit, and traffic impacts.

25. Airport Influence/Affected Area. The Property is in the Airport Influence/Affected Area and subject to the requirements of the Airport Influence Area Resolution. The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots.

ARTICLE III: GENERAL PROVISIONS

1. Duration. The covenants, conditions, charges and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot or further developed parcel or unit subject to this Declaration, their respective legal representatives, heirs, successors, or assigns in perpetuity. The covenants, conditions and restrictions are binding on the Owners, their families, tenants, guests and invitees.

2. Enforcement. Any owner, or the Declarant shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include legal action seeking an injunction to prohibit any violation, to recover damages, or both. Failure by any Owner, or by the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any lawsuit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees.

3. Severability and Interpretation. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect. In the event the provisions of this instrument are in conflict with subsequent covenants, conditions, and restrictions associated with the further development of any Lot, the more restrictive provision shall apply. The provisions herein shall be liberally construed to further consistent development of the Real Property and the enhancement and protection of the value, desirability, and attractiveness of the Real Property.

4. Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Declaration as it alone deems appropriate, so long as it shall own one or more Lots. Otherwise, the covenants, conditions, restrictions and uses created and established herein may be waived, abandoned, terminated, modified, altered or changed as to the whole of the said Real Property, or any portion thereof, with the written consent of seventy five percent (75%) of the property owners within the development, with each Lot or subsequently developed parcel or unit having one vote for this purpose; Provided that the covenants dealing with animals and pets and living with wildlife, wood burning devices, irrigation, weed control and revegetation, boulevard maintenance, radon, addressing, may not be amended or eliminated without concurrence and written consent of the appropriate governing body. No such waiver, abandonment, termination or modification contemplated herein shall become effective until the proper instrument in writing shall be executed and recorded in the office of the Clerk & Recorder of Missoula County, Montana.

5. Liability of Declarant. The Declarant shall have no liability for any of its actions or failures to act, or for an action or failure to act of any owner of any Lot or subsequently developed parcel or unit within the Real Property.

IN WITNESS WHEREOF, the Declarant has executed the foregoing Declaration on the day and year first above written.

Missoula Lofts, LLC

By _____
Title _____

STATE OF _____

County of _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of Missoula Lofts, LLC.

(SEAL)

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