

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

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ICON APARTMENT HOMES AT DOUGHERTY RANCH SUBDIVISION**

This Declaration is made this _____ day of _____, _____, by Braxton Development LLC, PO Box 11890, Bozeman, Montana and provides as follows:

RECITALS

A. Braxton Development 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 B of Certificate of Survey 6850, records of Missoula County, Located in the NW ¼ of Section 7, Township 13 North, Range 19 West, and the NE ¼ of Section 12, Township 13 North, Range 20 West Principal Meridian Montana, Missoula County, Montana.

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

ICON APARTMENT HOMES AT DOUGHERTY RANCH

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 rental residents of the Real Property.

C. THEREFORE, the Declarant hereby declares 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 multifamily, 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 Areas. “Common Areas” are identified within the plat of Icon Apartment Homes at Dougherty Ranch. Roads serving said subdivision shall be dedicated and granted to the City of Missoula. Alleys serving said subdivision shall remain the private property of the Declarant. Common areas shall not preclude the creation and existence of easements and easement areas for use by the Declarant and residents within Icon Apartment Homes at Dougherty Ranch. 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 Braxton Development LLC and their successors 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 may be shown upon the recorded plat map of future phases of the Real Property, subject to this Declaration, inclusive of public roads, private alleys, or other such access types 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. Icon Apartment Homes at Dougherty Ranch will be a privately-owned, luxury, multifamily, rental community, which will be fully amenitized for the exclusive use of the residents of the community. 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. 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 **all pertinent codes and regulations in the City of Missoula**. Provided, in the event of subsequent development and division of individual Lots, such review as 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.

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

No log homes or other log buildings or structures are permitted. 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 (re-used/salvaged) for accent or decorative features. Existing structures and/or buildings that predate the these protective covenants , whether intended for the use in whole or in part as a main dwelling house or as a garage, or prefabricated/modular buildings or structures 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 (this restriction does not preclude the use of panelized wall framing systems).

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 pre-engineered, metal buildings or outbuilding may be constructed, placed, or erected on any Lot.

3. Building Site and Driveways. Building locations shall not interfere with any stormwater detention facility located on a Lot. The maintenance responsibility of the stormwater detention facility(s) shall be by the Property Management Company.

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 shall be permitted under the subsequent development standards, provided the use of such materials is subject to review for compliance with all pertinent codes and standards of the City of Missoula, and such review includes a requirement that such alternate paving is professionally installed.

4. 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.

5. 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 by the authority having jurisdiction (either temporary or permanent occupancy). The preceding does not preclude the use of a temporary field office for construction activities.

6. Fences. Fencing shall not impair sight lines at any road or driveway intersection. Fencing is permitted to provide privacy or safety for any play area, patio, pool or other such amenity but shall not be constructed closer to a street line than the front building line of the dwelling on the Lot. Fence shall be constructed of PVC, metal/aluminum (field painted or prefinished), 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.

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

8. Common Areas. Any subsequent development of a Lot that includes or creates A Common Area that is to be used as a recreation area or open space shall include landscaping of such space. All subsequent development must require maintenance of such common areas or open spaces by the City of Missoula. Please note, any open-space restrictions included for common areas must be perpetual.

9. Easements. Easements for access, ingress/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 are anticipated for the development of individual Lots, and subsequent Owners of such Lots 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.

10. Boundary Control Monuments. The Declarant has caused, or shall cause, survey monuments to be placed on the corners of each Lot, as needed. It shall be the responsibility of the Owner to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from the Lot.

11. Garbage. The Declarant has identified a central trash/refuse collection area as part of its site plan. Under no circumstance shall any other location 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 by the various Lot Owners. The preceding does not preclude the temporary storage of construction materials (and related construction debris) on the Real Property, nor does this provision 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 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 be screened. Such containers must also have a sufficient tight fitting lid to deter the escape of obnoxious odors, and deter entrance by animals. Compost piles are prohibited on all Lots.

12. Animals and Pets. All subsequent development or division of Lots 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. Animal (pet) waste shall be immediately cleaned-up by the animal (pet) owner, or person responsible for said animal (pet). Such animals (pets) 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 nourished, 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.

13. Vehicles and Parking. All subsequent development or division of Lots 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.

14. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot or 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 all necessary signs within the Real Property to promote its development.

15. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any of Lot or 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 tenants from and against all loss resulting from any such damage or waste caused by him or his invitees.

16. 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.

17. Sanitary Restrictions. The tenants 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.

18. Weed Control. The Property Management Company is responsible for maintaining all lots in compliance with the Montana's Noxious Weed Control Act, and the attached Exhibit A Weed Management and Revegetation Plan. The Company 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.

19. Radon Mitigation. The EPA has designated the Missoula area as having a high radon gas potential (Zone 1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features.

20. House Numbers. Each dwelling unit shall have a unique unit number which may, or may not be visible from the street. Each building shall have a unique building number which shall be visible from the street in all lighting conditions, and shall contrast from the background color.

21. Living with Wildlife. Residents must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their

animals (pets), and properly storing garbage, pet food, livestock feed and other potential attractants. Residents 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 future residents “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 residents and the Declarant may have with wildlife, as well as helping residents and the Declarant 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. The Declarant shall be prepared to take the responsibility to protect their vegetation (fencing, netting, repellents) in order to avoid problems. The Declarant may 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, tenants 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. Compost piles can attract skunks and bears and are prohibited unless kept indoors.

22. Agricultural Operations. The Declarant is hereby notified 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. Residents shall be aware of impacts on such agricultural operations, including, but not limited to trespass on adjacent agricultural properties, failure to keep pets contained, and traffic impacts.

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 Tenants, 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

