



# MISSOULA COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

435 RYMAN | MISSOULA, MT 59802-4297 | 406.552.6630 | FAX 406.552.6053

December 7, 2022

Joe Dehnert  
IMEG Corp.  
1817 South Avenue W  
Missoula, MT 59801

Re: Icon Apartment Homes at Dougherty Ranch Annexation, Zoning, and Subdivision 2<sup>nd</sup> Sufficiency Review

Dear Joe Dehnert,

Following certification of 1<sup>st</sup> Element review and distribution of agency request-for-comment letters, the Icon Apartment Homes application became eligible for 2<sup>nd</sup> Sufficiency review on November 15, 2022. The sufficiency review deadline is December 7, 2022. **Development Services cannot certify your application packet as sufficient for governing body review.**

Below is a summary of the deficiencies. Please address the items listed below, then submit only the updated sections of the application packet with a new cover page clearly titled as 3<sup>rd</sup> Sufficiency Review, and include the date submitted. Please submit the amended sections as PDFs and provide a replacement paper copy of only sections that are amended. The amended materials will only need to be provided to the agencies indicated in the agency mailing list provided by this office.

---

## Section A

### A2. Project Summary

- The legal description(s) listed are not correct. Please correct this throughout the document.

### A3. Major Subdivision Application

- Section B: Please verify or correct number of lots. It appears that there are 83 lots and 613 units. Please correct this to be consistent throughout *this section*.
- Provide cited sources (external or documents provided within the application) for each claim within each answer.
- Please review the entire document to ensure that each answer is detailed and thorough; many sections have vague or unfounded answers that do not provide us with enough information to understand the proposal and determine sufficiency.
- Provide a more robust response to criteria #4: 'IMPACTS ON WILDLIFE AND WILDLIFE HABITAT', including a thorough response to the comment provided by the Five Valleys Audubon Society on September 28, 2022.

### A4. Preliminary Plat

- The legal description(s) listed are not correct. Please correct this throughout the document.
- Provide block numbers. **Alleys do not divide blocks.** Please combine the Block names for Block 1-2, Block 3-4, and Block 6-7.
- Lot 36 is in T4 and cannot have a width greater than 100'. You propose 124.7'. Please revise.
- The listed width of Lot 38 is 289.1'. Please revise.

## A5. Master Site Plan

*Note:* Based on the Street Hierarchy in Division 6, Section 6.2 of the Form Based Code, the proposed streets are ranked in the following order:

### **TIER 1:**

Pine Butte Boulevard (Main Street Primary)

### **TIER 2 (tied):**

Veterans Way (Urban Bike Street)

Maddox Ave (Urban Secondary)

Roper Way (Urban Secondary)

### **TIER 3 (tied):**

Dougherty Drive (Neighborhood Collector)

Jumping Horse Lane (Neighborhood Street)

Flynn Trail (Trail Street)

### **TIER 4:**

Alleys

- **Alleys do not divide blocks.** Three blocks (including their alleys) are over the 2,000 ft perimeter maximum for T4 and T5 transects. Please revise.
  1. Block 1 & 2: Perimeter of 2,618.2 feet.
  2. Block 3 & 4: Perimeter of 2,348.6 feet.
  3. Block 6 & 7: Perimeter of 2,239.5 feet.
- Please revise the site plan so that *no building fronts the back of another building*. Two buildings on Lots 27-30. *Alleys and mid-block parking areas should be faced with the backs or sides of buildings and lots.*
- The Public Utility Easement on Lots 37 and 38 appears to be in the mandatory build-to zone. Demonstrate that these lots may be built on, in compliance with the 18' maximum front build-to zone / setback.
- Demonstrate that all tree wells and parking planters will be located along thoroughfares and will comply with the size minimum of 15'.
- Demonstrate that travel lanes will be shared with bicycles on Pine Butte Boulevard, Maddox Ave, Roper Way, and Jumping Horse Lane.
- Dougherty Drive is a Neighborhood Collector and may not abut the T5 zone. Please revise the transect zone on Lots 73-76.
- Jumping Horse Lane is a Neighborhood Street and may not abut T4-O or T5. Please revise the transect zone on Lots: 10-12, 37-38, and 48-50.
- BLOCK 7: There is no T5 zone on this "block." Remove this from the parking estimate on the Parking Exhibit in the Master Site Plan.
- BLOCK 11: This parking estimate is lacking necessary detail to verify compliance. Please provide the estimated area of the clubhouse.
- Identify the location of parking for the Villa. Is this within Block 8?
- The maximum residential density in the EADA zone is 4 dwelling units per acre. Please demonstrate compliance with this requirement.

## A8. Annexation Petition

- Provide an updated petition, signed by *both* managers of Dougherty Ranch, LLC.

## A9. Illustrative Plan

- Provide an updated exhibit consistent with the current lot layout and development proposal.
- Provide an exhibit that clearly shows which areas are proposed as parkland dedication / open space dedication in total and per phase.
- *Note:* Staff recommends breaking up the large areas of parking into smaller areas and adding more bioretention in landscape islands to treat as much stormwater as possible from these large impervious areas.

#### A10. Variance Request

- The language in this request is difficult to decipher. Please provide simple, clear language regarding the variance request. Additionally, please verify the Lots referenced for variance are correct (Lot 27 appears to apply but not Lot 31).

#### Section B

##### B3. Comprehensive Plan and Land Use Map

- Please provide a map with land use designations (Article 5, 5-020.4) using the [map](#) from the [Our Missoula Growth Policy](#). The County 2019 Land Use Element map is not applicable to the City.

##### B6. USGS Topographic Map

- The document submitted for 2<sup>nd</sup> Sufficiency is identical to the document provided for 1<sup>st</sup> Sufficiency. Please provide further topographic detail (Article 5, 5-020.9E).

#### Section C

##### C3. Draft Covenants – Icon Apartment Homes

- The legal description(s) listed are not correct. Please correct this throughout the document.
- Please identify the responsible party for local taxes (5-020.14K(4)).
- Please identify the attorney that has reviewed these regulations (5-020.14K(7)).
- The permission of the City Council is required before the association can be dissolved or the restrictions modified (5-020.14K(9)).

#### Additional Comments to be Addressed in Application Materials

##### *Airport, Missoula*

- Regardless of the outcome of this Review, the owners or future owners of this property are required to have, in place, an Avigation Easement. I have attached a sample agreement for your consideration.

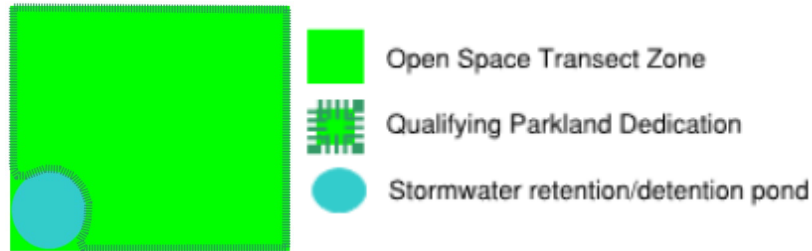
##### *Five Valleys Audubon*

- Our concern with the Icon Apartment Homes project is not with its scope and location. It's in an area where the community has expressed its wish to see future residential development and we expected that eventuality. Rather, we are concerned with the manner in which the project's impacts to wildlife and wildlife habitat were addressed in the application. Predicting the impact of an undertaking requires knowledge of what species tend to use an area being proposed for development. A report submitted along with the application contains site specific accounts of vegetation and wildlife found in the area. Yet, conclusions in the application regarding impacts on wildlife and wildlife habitat are not founded on that information. Rather, they are based on large-scale species inventories. Data from those inventories are not site-specific and pertain to critical species that might be found within a broad geographical area. By and large, they are of little value in describing wildlife use on a specific land area such as that being proposed for the Icon Apartment Homes development.
- In addressing the impact of the development on the natural environment, the application concluded that *"There are minimal impacts to the natural environment because the site is currently vacant."* The development will have a substantive impact on year-round avian use of the site, particularly that of raptors. The proposed Icon Apartment Homes development would be located in an area that now exists as open space land and comprises habitat for meadow voles and Columbian ground squirrels. Both of these species are important prey for such raptors as American kestrels and red-tailed, Swainson's and rough-legged hawks. Since the proposed development will eliminate the prey species habitat, another increment of land needed by foraging raptors is lost. Responding to new human activity, raptors will doubtlessly seek prey on undeveloped habitat elsewhere and the impact may seem minor. Yet, when viewed in context with what is occurring in the Missoula Valley, the impact is

consequential. It is a loss of land that adds to the slow and persistent shrinking of our remaining open space habitat.

### *Parks and Recreation*

- Compile a parkland dedication exhibit like the provided “Example Parkland Dedication Exhibit,” which will help determine whether Open Space areas meet Parkland Dedication minimum requirements. As currently shown, many of the Open Space areas may not meet our requirements defined in Missoula Subdivision Regulations section 3-080.8 and 3-080.9 as well as FBC section 2.1.C.5. You may make changes to meet the requirements or pay cash-in lieu to make up the difference.
- A call out on the Master Site Plan states: “FLYNN TRAIL RIGHT-OF-WAY (0.89 ACRES) INCLUDED AS PARKLAND DEDICATION.” This area cannot be counted toward parkland dedication because it is right of way. For clarification, see FBC page 2-4, Section 2.1.C.5.e.
- The current layout of tree wells and parking on the west side of Roper Way is impractical. Refer to Public Works and Mobility’s comments on improving the boulevard tree and parking layout within the Parking Lanes/Curbside Flex Zone of Roper Way.
- Subtract out any stormwater retention or detention ponds from parkland dedication area totals to comply with Missoula Subdivision Regs 3-080.9 as well as FBC section 2.1.C.5.d. For example, this whole green area may be considered an Open Space Transect per the form based code, but only the area in the dashed area could be parkland dedication.



### Recommendations

*This section contains additional recommendations for improving the quality of the packet. It also includes important notes about process and staff requests. These are not sufficiency items – though they are still recommended.*

#### 1. Preliminary Plat

- Alleys are shown with 36’ ROW on the preliminary plat, FBC Section 6.7.U requires 24’. The increased ROW is placing parking lot elements in the ROW to include striping and landscape islands. Can we reduce the ROW width to only account for the asphalt drive lanes? If not, can these alleys be private and not public? The City does not intend to maintain these parking elements if they are located within the ROW.
- Provide ROW easement for Veterans Way (and Maddox) in Phase 1 to ensure street and utility connectivity to adjacent properties and future development is possible prior to Phase 2 final plat. *This will be a recommended condition of approval for Phase 1.*

#### 2. Utilities

##### General

- City Engineering is not comfortable with no sewer/water in Pine Butte west of Dougherty and Maddox south of Flynn Trail. Future extensions would impact new roads. See comment regarding lift station below.

##### Sewer

- Ensure sewer main stubs are provided so adjacent parcels would have access to the gravity main serving the lift station without cutting back into new roads.
- Provide an analysis of the area that could be served by the lift station so that mains and lift station are sized appropriately, and mains are deep enough and located properly for future use (see 2.a.i). Future use would include Icon, currently undeveloped land west to Airport property (adequate depth to serve developable portion of airport) and south to Camden Street.
- Stub sewer across Maddox at Trail (or wherever this main is moved to) and Jumping Horse intersections as well as across Veterans Way

Water

- Water Main J & I will produce a dead end until looped though West End Homes and Sapphire Place. Water modeling for Phase 2 may require additional looping (between Maddox and Pine Butte)

Stormwater

- Storage Indication routing method is acceptable at this stage but Dynamic Storage Indication routing method will be required for subsequent submittals.
- Continue coordinating stormwater discharge rate/location with Sapphire Place Subdivision. Strongly recommend providing adequate surface conveyance to pass the entire pre-development 100-year event originating on Sapphire Place property in case the Sapphire Place development is delayed or abandoned.
- If stormwater discharge across Maddox Avenue is conveyed (via swales or other means) to existing drainage paths before exiting the ROW, no discharge agreement will be required with downstream landowner. If stormwater is discharged from the ROW at a point where no drainage path currently exists, an agreement will be required for that discharge location.
- Ensure all stormwater infrastructure follows the Design Criteria in the Form Based Code, Division 4, Section 4.7.C and Table 4-6.

3. Streets

General

- Add pedestrian, bicycle facilities, roadside swale on Dougherty south of Pine Butte Blvd.  
*This will be a recommended condition of approval for Phase 1.*

4. Fire Protection

- Second access needed for Phase 1: Pine Butte, Veterans, Dougherty, Jumping Horse.  
*This will be a recommended condition of approval for Phase 1.*

5. Parking

- Some parking spaces are not located behind the Principal Façade of buildings (e.g. "Block 2"), please revise this.
- **This proposal is over-parked by 244 spaces.** Consider reducing and breaking up the vehicular use area on the following "Blocks:"
  - BLOCK 2: This block is heavily over-parked (104 spaces over minimum).
  - BLOCK 3: This block is over-parked (28 spaces over minimum).
  - BLOCK 4: This block is over-parked (35 spaces over minimum).
  - BLOCK 7: This block is over-parked (33 spaces over minimum).
  - BLOCK 8: This block is over-parked (44 spaces over minimum).

6. Additional Items

*Recommended Conditions of Approval*

1. Provide second access for fire prior to Phase 1 final plat – this is to address if adjacent development does not install roads first (West End Homes, Sapphire Place).
2. Agreement for BUILD improvements (Flynn Lane Trail).
3. Install ped/bike facilities on Dougherty Drive south to West End Homes or possibly to England Boulevard. We can discuss what would be acceptable (temporary asphalt path) but there is a 200’ gap on Dougherty Drive between Icon and West End Homes and an additional 450’ to England. The portion of Dougherty in West End Homes is in Phase VIII (plat filing deadline 2043).
4. Easements for future utility routing and road connections in Phase 2 provided to Phase 1 final plat. We will decide which future connections to include but this is meant to ensure adjacent development can connect to infrastructure through the development in case Phase 2 does not get filed before the need is there.
5. Provide an easement required for accessing the property to the South (5-020.5).

When you are ready to submit your updated materials, please direct them to the attention of Madson Matthias. If you have any additional questions, you may reach me at (406) 552-6093 or email me at [MatthiasM@ci.missoula.mt.us](mailto:MatthiasM@ci.missoula.mt.us).

Warmly,

*Madson Matthias*

Madson Matthias, Associate Planner  
Development Services  
Community Planning, Development, & Innovation

cc: Dave DeGrandpre, CPDI  
Mary McCrea, CPDI  
Eran Pehan, CPDI  
Walter Banziger, CPDI  
Troy Monroe, PW&M  
Steve Reichert, PW&M  
Nathan McLeod, Parks & Rec

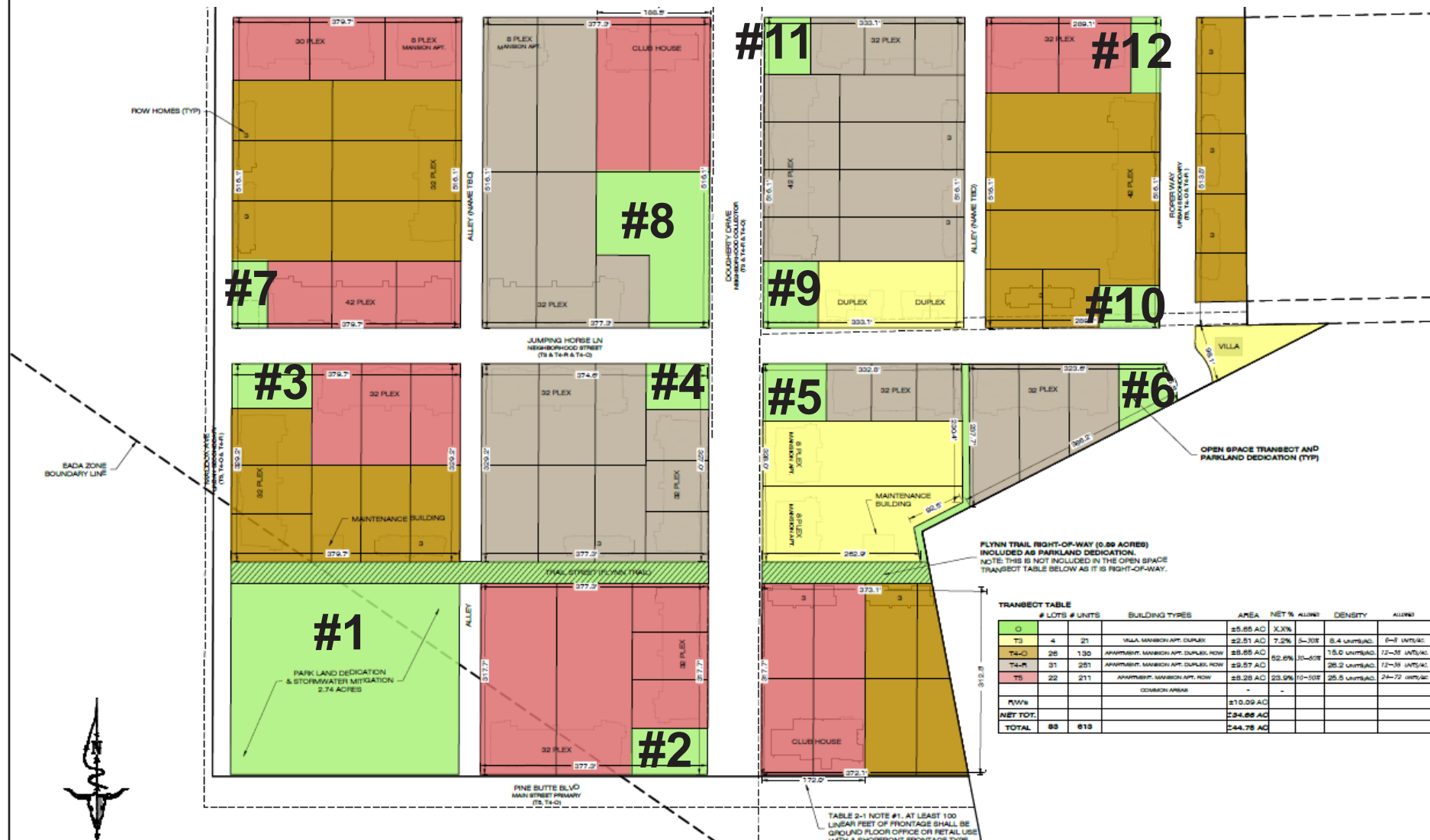
Attachments:

1. Example Parkland Dedication Exhibit
2. Avigation Easement Disclosure
3. Avigation Easement

# Example Parkland Dedication Exhibit

## Proposed parkland dedication plan

\* Could be illustrative or not, but each proposed area needs to be labeled with an identifier, the area, and whether stormwater management retention/detention is within the space



## Description of each parkland dedication area

1. Explain which option (A, B, C, D, or E from code section 3-080.8 provided here) the area complies with and why. Make sure that none of the descriptors in code section 3-080.9 apply.

- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

## Exerpt from Missoula City Subdivision Regulations, Section 3-080 .8 & .9

- .8 Parks and open space types and standards: parks, open space, and common area dedication must meet at least one of the following criteria:
- A. Provides for the preservation of a physical amenity such as a meadow, a stand of trees, significant wildlife habitat or a wildlife corridor, a scenic hillside with slopes less than 25%, a stream or other significant water body, a riparian resource area or some other natural feature that the City Council determines is significant enough for parkland dedication. Open space must be managed to remain in a near natural state when it has been dedicated for preservation or conservation purposes, and managed for noxious weeds and public safety concerns such as wildland fire and hazard trees. Public trail connections are permitted if deemed appropriate by the City Council; or
  - B. Provides a site for active recreation and public gathering (neighborhood park), that must substantially conform to the following standards:
    - (1) Five acres or greater in size unless the opportunity for this size is not feasible or required;
    - (2) Centrally located within the proposed subdivision or adjacent to other planned or existing park or open space;
    - (3) Adjacent to public streets on at least 50% of the park's perimeter;
    - (4) Accessible to bicycle and pedestrian trails where possible; and
    - (5) At least 50% of the park must have 2% or less slope to accommodate playing fields.
  - C. Establishes a pedestrian/bicycle greenway corridor if such a corridor is determined by the parks department and approved by City Council to have a primarily recreational and/or commuter function; or
  - D. Creates a courtyard of less than .5 acre, provided the courtyard is part of a common area dedicated to a property owners' association; or
  - E. Provides for other parks, open space, or common area designs that meet the intent of this section and meet the goals of the *Master Parks and Recreation Plan for the Greater Missoula Area*, the *Missoula Urban Area Open Space Plan*, and other applicable area plans.
- .9 Unless the City Council determines otherwise, the following areas within a subdivision will not count toward the parkland dedication:
- A. Hillside over 25% slope;
  - B. Riparian resource areas associated with irrigation or roadside ditches;
  - C. Monument entry areas and central landscaped boulevards;
  - D. Stormwater retention or detention ponds that are designed to hold stormwater runoff from less than 100-year events; and
  - E. Parking areas for more than five cars and road rights-of-way that are located within the parkland, open space, or common area, unless the parking is provided for the utilization of the parkland, open space, or common area.

**EXHIBIT A TO**  
**SUBDIVISION AVIGATION EASEMENT**

**Airport Influence Area disclosure for declaration of covenants, restrictions and conditions for \_\_\_\_\_:**

Airport Influence Area. A portion of the Real Property is located within the Missoula County Airport Influence Area and is subject to the requirements of the Missoula County Airport Influence Area Resolutions. The resolutions that created the Airport Influence Area were adopted by the Board of County Commissioners for Missoula County pursuant to Resolution No. 78-96 and amended by Resolution No. 78-187 dated July 5, 1978 and December 6, 1978, respectively, and recorded in Book 121 of Micro Records, page 1319 (Resolution 78-96) and Book 135 of Micro Records, page 474 (Amendment by Resolution 78-187). A portion of the real property is further subject to an Avigation Easement entered between the Declarant and the Missoula County Airport Authority, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and recorded on the records of the Missoula County Clerk and Recorder in Book \_\_\_\_\_, Micro Records at Page \_\_\_\_\_, all of which limit and restrict the rights of the Owners now and into the future. The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots. Prospective purchasers and Owners are advised that the operations at the airport may change and/or expand in the future, thereby changing and/or expanding the impacts felt on the portion of the Real Property subject to the Avigation Easement. Prospective purchasers and Owners are advised and should consider before purchasing a Lot that noise, vibration, dust, fumes, smoke, vapor and other effects from aircraft may occur, which may cause inconvenience or annoyance that may vary from Lot to Lot and that may affect people in different ways or extent. Federal funding for soundproofing, other mitigation of these impacts, or for acquisition of these properties is not available at present, nor in the future. The provisions of paragraph 3 of the above-described Avigation Easement executed by the Owner/Declarant provides for a full waiver and release by Owner/Declarant of any right or cause of action which it now has or may have in the future against the Missoula County Airport Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other effects heretofore or hereafter caused by the operation of aircraft in said air space and/or by operations at the Missoula County Airport. The acquisition of a Lot or Lots in \_\_\_\_\_ Subdivision subject to the Avigation Easement and the aforementioned Resolutions by a prospective purchaser shall constitute an express acknowledgment and agreement by such prospective purchaser on behalf of prospective purchaser, its heirs, personal representatives, successors and assigns, that prospective purchaser fully waives and releases Owner/Declarant, \_\_\_\_\_, and its successors and assigns, as well as the Missoula County Airport Authority and its successors and assigns, of any right or cause of action which prospective purchaser now has or may have in the future as the purchaser and occupant of \_\_\_\_\_ against [owner], and/or the Missoula County Airport Authority and their respective successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other effects heretofore or hereafter caused by the operation of aircraft in the air space and/or by the operations at the Missoula County Airport within the Missoula County Airport Influence Area. This paragraph may not be revised without the written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

**After recording return to:  
Missoula County Airport Authority  
5225 Highway 10 West  
Missoula, MT 59808**

---

**AVIGATION EASEMENT**

---

\_\_\_\_\_, (“Grantor”), is the owner of \_\_\_\_\_ in  
Missoula County, Montana (“Property” or “Grantor’s Property”), the highest ground elevation of  
which is \_\_\_\_\_ feet above mean sea level, which real property is within the  
adopted Airport Influence Area, and hereby grants unto the MISSOULA COUNTY AIRPORT  
AUTHORITY (“Authority”), 5225 Highway 10 West, Missoula, Montana 59808-9399 the  
following easement:

1. An easement and right-of-way for the use and benefit of the public, for the free and unobstructed passage of aircraft in, through, and across all of the airspace above Grantor’s property at or above an elevation of \_\_\_\_\_ feet mean sea level. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements.
2. The permanent right of flight for the passage of aircraft for the use and benefit of the public in the airspace above Grantor’s property, together with the continuing right to cause in said airspace such noise, vibration, dust, fumes, smoke, vapor, and other effects as may be inherent for navigation of or flight in air, using said airspace, or landing at, taking off from, or operating on Johnson Bell Field.
3. The full waiver and release by Grantor of any right or cause of action which it now has or may have in the future against the Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor, and other effects heretofore and hereafter caused by the operation of aircraft in said airspace and/or by any operations at the airport.
4. The covenant and agreement that from and after the execution of this document, the Grantor shall not erect any structure or object or allow any tree or other vegetation to a

exceed the height of \_\_\_\_\_ feet mean sea level or encroach upon or extend in any way into this easement and right-of-way. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements in structures to be built.

5. The continuing right of the Authority to clear and keep clear Grantor's property of any and all obstructions that encroach upon or extend in any way into this easement and right-of-way above an elevation of \_\_\_\_\_ feet mean sea level, and for such purpose to enter upon the surface of Grantor's property and cut and remove any tree or other vegetation, or to remove, raze, or destroy those portions of buildings or other structures that would infringe upon or extend into said elevation. Such right includes the right of ingress to and egress from, and passage over Grantor's property for the purpose of effecting and maintaining such clearances as aforesaid.
6. The covenant and agreement that from and after the execution of this document, Grantor shall not put its property to any of the following uses which would:
  - A. Create an unreasonable interference with (1) radio communication for aircraft using the airport; and (2) electronic navigational aids or devices and instrument landing systems. Examples of equipment that can cause such interference are generators, motors, and artificial lighting devices which create excessive static.
  - B. Create a hazard to flying by materially reducing visibility, such as incinerators, rock crushers, smelters, chemical manufacturing, and similar uses.
  - C. Make it difficult for fliers to distinguish between airport or other navigational lights or markers and other lights; or cause glare to fliers using the airport, such as any arrangement and use of lights which resemble a layout or color of a landing area, or search lights or flash-type advertising signs.
  - D. Result in any business, structure, tree, occupation or use which is dangerous or hazardous to the safety of aircraft using Johnson Bell Field or to property or persons using Johnson Bell Field or flying in the vicinity thereof. Towers, poles, smokestacks, advertising balloons, above-ground bulk storage of petroleum products, and fireworks manufacturing are examples of potentially dangerous uses, structures, and activities.
  - E. Result in a land use or activity that is not ordinarily considered to be compatible with aircraft operations because of aircraft noise. Such land uses and activities include, but shall not be limited to, all types of schools, hospitals, religious facilities, and other uses whereby the aircraft noise could interfere with speech, sleep, or the uses normally associated with structures. In this regard, residential development in areas not exceeding 64 db sound levels need to comply with the IBC Construction Standards or the construction standards applied by Missoula County or the governmental entity having jurisdiction of the area at the time of construction. Residential development in areas greater than 64db noise level must be sound attenuated as required by FAA Standards.



