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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS (hereinafter "Declaration") is made as of the 22nd day of August, 2004, by Western Hospitality Group, LP, a Montana limited partnership ("Declarant").

1. PRELIMINARY

1.1. Definitions.

1.1.1. "Building Area": The designated location and total floor area of any building to be constructed upon Lots 1 through 3 measured from the exterior surface of exterior walls as designated on Exhibit A.

1.1.2. "Building Lot": All those areas on each Lot (i.e., 1 through 3) as shown on Exhibit A wherein buildings may be constructed as legally described and inclusive of the associated parking area.

1.1.3. "Common Area": Those areas within the Hilton Garden Inn Project (HGI Project) which are designed to serve as the primary arterial common driveways and adjacent sidewalks for pedestrian and vehicular ingress and egress to the property within the HGI Project, as well as the sign pad property upon which the marquee sign advertising the business of the property is located, inclusive of the marquee sign. In order to assure a uniform quality level of maintenance and appearance, the common area to be maintained shall also include all boulevards and landscaped parcels immediately adjacent to Reserve Street, Stockyard Road and Howard Raser Drive and for maintenance purposes, that portion of the property being utilized for common parking. The location of the heretofore described elements of the Common Area are more particularly described on Exhibit B attached.

1.1.4. "Common Area Maintenance Agreement": The terms and conditions of this Agreement and the code of regulations of Hilton Garden Inn Association, Inc. to the extent that the provisions thereof relate to assessments and other aspects of the management and maintenance of the Common Area.

1.1.5. "Consenting Owner": (1) Declarant for so long as Declarant is the Owner of any property within the Hilton Garden Inn Project ("HGI Project") and (ii) those other Owners as Declarant may designate as a Consenting Owner by the recording of a supplement hereto making such designation. Declarant shall have full authority, but no obligation, to designate any and as many such other Consenting Owners as, in Declarant's sole discretion, Declarant deems desirable, which designation shall state the name of the Consenting Owner and the Lot to which such designation shall attach.

1.1.6. "Floor Area": The total number of square feet of ground floor space in a building whether or not actually occupied. Floor area shall be measured from the exterior line of the exterior walls and from the centerline of any party or common walls without deduction for columns, walls or other structural or nonstructural components

1.1.7. "Declarant": Western Hospitality Group, LP, a Montana limited liability partnership, whose address is P.O. Box 16540 Missoula, Montana 59808

1.1.8. "Declaration": The Declaration of Protective Covenants, Conditions and Restrictions and Grant and Reservation of Easements set forth herein (hereinafter "Declaration").

1.1.9. "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Lot.

1.1.10. "National Chain": A business organization operating more than thirty (30) stores in two (2) or more states under the same trade name.

1.1.11. "Owner": The record holder of fee simple title to a Lot, its heirs, personal representatives, successors and assigns.

1.1.12. "Lot": Lots 1, 2 and 3 as shown on Exhibit A and more particularly described in Schedule II attached hereto and incorporated herein by this reference. Lots may be reconfigured from time to time by the Declarant.

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1.1.13. "Person": Any Individual, limited liability company, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or any other form of business or legal entity.

1.1.14. "Retail Building": Any building actually constructed upon Lots 1 (Tract 2 of COS 5564), 2 and 3.

1.1.14.1 "Restrictions": The easements, covenants, restrictions, and encumbrances contained in this Declaration.

1.1.15. "Service Facilities": If any of the following exist, loading docks, trash container enclosures, recycling facilities HVAC systems, exterior coolers, electrical and refrigeration facilities, and other similar facilities.

1.1.16. "HGI Project": All of the Lots depicted on Exhibit A and collectively described on Schedule I, as well as the parcel described as the Hotel Lot Area. The HGI Project is located near the intersection of Reserve Street and Howard Raser Drive in the city of Missoula, Montana, and is bordered on the south by Stockyard Road as shown on Exhibit A and more particularly described in Schedule I.

1.2. Declarant. Declarant is Western Hospitality Group, LP, the Owner of the HGI Project at the moment of recordation of this Declaration.

1.3. Purpose. Declarant plans to develop the HGI Project as integrated Hotel, Conference Center with its own restaurant facilities and with lots dedicated to use for high quality, independently owned restaurant facilities (or other limited commercial uses acceptable to Declarant and identified herein), for the mutual benefit of all real property in the HGI Project and, therefore, hereby has established this Declaration. Declarant has deemed it desirable for preservation of the value, desirability and attractiveness of the HGI Project to create a development of high quality of land use, design and construction with common areas and to protect the high quality development and to insure adequate maintenance of the common areas and improvements located thereon and therefore hereby establishes this Declaration for the HGI Project to assure that the development which occurs on Lots 1 through 3 is compatible with its development of the facilities Declarant intends to construct on property.

1.4. Declaration. Declarant hereby declares that the HGI Project, and each lot, Lot and portion thereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the terms, restrictions, and easements contained in this Declaration and all of the foregoing are declared and agreed to be in furtherance of a general plan for the protection, maintenance subdivision, improvement and sale of the HGI Project, and to enhance the value, desirability and attractiveness of the HGI Project. The terms, easements and restrictions set forth herein shall run with the land constituting the HGI Project, and with each lot or estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the HGI Project or any lot, Lot or portion thereof; shall inure to the benefit of every lot, Lot and portion of the HGI Project and any interest therein; and may be enforced by any Owner for so long as any such party shall remain an Owner. The foregoing provisions notwithstanding, Declarant expressly exempts itself from all height and design requirements of this Declaration and reserves unto itself the right to make all determinations regarding the height and all other size, finish, design and construction aspects of the facilities to be constructed on Declarant's portion of the property. Provided, however, that in doing so, it is Declarant's express intention that its facilities which it will erect will be compatible with those facilities to be constructed on Lots 1-3 as shown on Exhibit "A".

2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. Building Location. All buildings and other structures (except those permitted in Section 2.2) shall be placed or constructed upon the Lots only within the area of the Building Area as shown on Exhibit A which may only be changed by the Consenting Owner; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from any building into the Building Lot. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto, as well as the Declaration set forth in this document. Any change in the location of any building to be constructed on the Building Area shall require advance written approval of Consenting Owner. Any proposal for change of location must be accompanied by a site plan clearly reflecting the proposed relocation site for the building and the layout of parking stalls to assure maintenance of a like number of parking stalls as reflected on Exhibit A.

2.2. Common Area. The Common Area is hereby reserved for the sole and exclusive use of all Owners of the HGI



Project, their tenants, contractors, employees, agents, customers, licensees and invitees. The Common Area may be used for vehicular driving, pedestrian traffic, directional signs, (sidewalks, kiosks, seating, bicycle racks), landscaping (such as boulevard and landscaped parcels adjacent to Reserve Street, Howard Raser Drive, and Stockyard Road), architectural amenities (such as fountains or statues), and utilities and for no other purpose unless otherwise specifically provided in this Declaration or approved in writing by the Consenting Owners. Except as herein stated, no buildings or structures not shown on Exhibit A shall be placed or constructed in the Common Area except pylon and directional signs (as provided in Article 4), paving, bumper guards or curbs, landscape planters, lighting standards, utility pads and equipment (and sidewalks adjacent to common driveways) unless approved in writing by the Consenting Owner. The Common Area shall be constructed in substantially the same location as designated on Exhibit B and shall be kept and maintained as provided for in the Common Area Maintenance Agreement. All portions of any Building Lot which cannot be used for buildings or Service Facilities shall be developed by the Owner thereof, at said Owner's sole cost and expense and at the time the building on such Building Lot is constructed, in accordance with a site plan approved by the Consenting Owner and maintained by Owner to insure, inter alia, the designation and availability of parking stalls subject to the cross parking easement set forth in Paragraph 3.1 hereof. The sizes and arrangements of the Common Area improvements, including, without limitation, access, driveways, striping, traffic directional arrows and signs, concrete bumpers, and landscaped areas, together with necessary planting, will be substantially as set forth on Exhibit B but may be modified by the Consenting Owner to accommodate orderly use and/or function of the Common Area.

2.3. Type and Design of Building.

2.3.1. Each building on Lots 1 through 3 in the HGI Project, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the HGI Project, including, but not limited to, the hotel to be erected on the site. An architectural concept plan shall be submitted to the Consenting Owner within 30 days of closing. No building may be constructed nor the exterior of any existing building changed in any way (including, without limitation, signs and color) without the prior written approval of the Consenting Owners as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. The standard signs and logos of National Chains, and the opening, closing, modification or relocation of any door, however, shall not require approval. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other buildings in the HGI Project. The Consenting Owner must approve or disapprove the proposal within thirty (30) calendar days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval and under what conditions, if any, the proposal would be approved, otherwise such Consenting Owner shall be deemed to have approved the proposal after said thirty (30) days. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal. Notwithstanding the foregoing provisions, the Consenting Owner has agreed with the Owner of Lot 1 on Exhibit A attached (Tract 2, COS 5564) that it may use its approximately 5,000 square foot prototype building on the restaurant pad, subject to mutually agreed upon exterior finish materials which must consist of stucco, brick, wood or river rock, or a combination thereof, and exterior finish paint colors, all of which must be acceptable to Consenting Owner, exclusive of awnings, which Consenting Owner acknowledges shall be blue. All refuse disposal or comparable facilities outside of the restaurant building shall be screened from view with an enclosure constructed of materials comparable to the exterior finish and color. Furthermore, the Consenting Owner has agreed that the maximum height of the building on this Lot shall be 22 feet, i.e., no element of the building may extend more than 22 feet above the surface of the property except for the Lot Owner's prototypical tower which may extend to 30 feet at a dimension of 10 feet by 15 feet. Any mailbox or mail receptacle to be installed on Lot 1 (Tract 2 of COS 5564) shall be subject to Consenting Owner's prior written express approval.

Additionally, notwithstanding the foregoing provisions, the Consenting Owner has agreed with the Owner of Lot 2 that it may use its approximately 3800 square foot prototype building on the restaurant pad, subject to mutually agreed upon exterior finish materials which must consist of stucco, brick, wood or river rock, or a combination thereof, and exterior finish paint colors, all of which must be acceptable to Consenting Owner. All refuse disposal or comparable facilities outside of the restaurant building shall be screened from view with an enclosure constructed of materials comparable to the exterior finish and color. Furthermore, the Consenting Owner has imposed a height restriction on the Owner of Lot 2 for its restaurant building of 22 feet, i.e., no element of the building may extend more than 22 feet above the surface except for its standard tower feature, which is 10 feet by 12 feet and may extend to 32 feet. Any mailbox or mail receptacle to be installed on Lot 2 is subject to Consenting Owner's prior written express approval.



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- 2.3.2. Except as the Consenting Owner may agree to in writing in its sole and absolute discretion, every building shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Lot. The purpose of this subparagraph is to allow buildings built on each Lot to be fire rated as separate and distinct units without deficiency charge.
- 2.3.3. No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the HGI Project.
- 2.3.4. No building on Lot 1, 2 and/or Lot 3 shall exceed the lesser of the agreed upon height or thirty (30) feet in height (measured from finished floor elevation of the Building) unless otherwise approved by the Consenting Owners and the requisite governmental authorities; provided, however, that architectural features on the front of such building may extend to thirty (30) feet (measured from finished floor elevation of the Building on Lot 1, 2 or 3 and the requisite governmental authority; provided, however, that the architectural feature on the front of any such building located on Lot 1 (Tract 2 of COS 5564) such as a tower may extend to the lesser of the agreed upon height or 30 feet measured from the finished floor elevation of the building on Lots 1, 2 or 3.
- 2.3.5. Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owners Lot(s) in a quality condition comparable to that of first class HGI Projects of comparable size and nature. All Service Facilities shall be attractively screened from view from the Common Area.
- 2.3.6. Consenting Owner's/Declarant's Building Exemption. The foregoing provisions notwithstanding, Declarant expressly exempts itself from the height and design requirements of this Declaration, and reserves unto itself the right to make all determinations regarding the height and all other size, finish, design and construction aspects of the facilities to be constructed on Declarant's portion of the property. Provided, however, that in doing so, it is Declarant's express intention that its facilities which it will erect will be compatible with those facilities to be constructed on Lots 1-3 as shown on Exhibit "A".
- 2.4. Construction Requirements.
- 2.4.1. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the HGI Project shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay. (i) access to or from the HGI Project, or any part thereof, to or from any public right-of-way; (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the HGI Project and open for business to the public; or (iii) the receiving of merchandise by any business in the HGI Project including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or repair of any building, sign or Common Area improvements located in the HGI Project including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the HGI Project approved in writing by the Consenting Owners. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.
- 2.4.2. The Contracting Party shall not permit any liens to stand against any Lot for any work done or materials furnished in connection with the performance of the work described in Section 2.4.1; provided, however, that the Contracting Party may contest the validity of any such lien on the Contracting Party's Lot, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Lot encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner of said Lot shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the HGI Project from any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorneys fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent act or willful misconduct of the indemnified Person, its tenants, subtenants, agents, contractors or employees. The Contracting Party, if not an Owner, shall: (I) notify the Owner of said Lot of any work to be performed on its Lot so that the Owner can post a notice of nonresponsibility on its Lot and (ii) comply with laws regarding posting of notices of non-responsibility on such Lot where work is being conducted. The Contracting Party, if not an Owner, shall require every contractor which is to perform work thereon to: (i) include in all construction contracts for work performed upon any Lot a notice to all contractors, subcontractors, laborers and material suppliers that the Contracting Party is not acting as the agent of the Owner and that the Contracting Party is not the owner of the Lot; and (ii) waive in writing any claim



against the Owner of said Lot and any right to lien said Lot and such Contracting Party shall provide said Owner with a copy of each such waiver prior to commencement of work.

- 2.4.3. Incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration of buildings, signs and Common Area improvements located in the HGI Project, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in 'the HGI Project.
- 2.5. Casualty and Condemnation. In the event all or any portion of any building in the HGI Project is: (i) damaged or destroyed by fire or other casualty; or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the HGI Project or any portion thereof, shall be covered by either grass, a dust cap of rolled, crushed rock no greater than 1 1/2-inch minus in diameter, or a one-inch minimum asphalt dust cap and shall be kept watered, if grass, weed free and clean at such Owner's sole cost and expense until buildings are reconstructed thereon.
- 2.6. Indemnification. Each Owner hereby agrees to indemnify, defend and hold harmless the other Owners and occupants from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any Person or damage to or destruction of any property occurring in or on the interior or exterior of any building and sidewalk(s) constructed on the indemnifying Owners Lot, unless caused by the negligent act or willful misconduct of the indemnified Person, its tenants, subtenants, agents, contractors or employees.

3. EASEMENTS- GRANT AND RESERVATION

3.1. Ingress, Egress and Parking. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Lot or parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking (with the sole exception that employees must park on their employer's Lot or in an area designated pursuant to Section 4.2) upon, over and across that portion of the parking areas as depicted on Exhibit A and located on each Lot or parcel, except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities.

3.2. Utility Lines and Facilities.

3.2.1. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Lot belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Area of the grantor's Lot(s) for driveway purposes for pedestrian and vehicular ingress and egress to the HGI Project and/or for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephone and television conduits and lines, electrical conduits or systems, gas mains and other public or private utilities (collectively or individually "Utility System"). Such Utility System shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the HGI Project). The installation, operation, maintenance, repair and replacement of such Utility System within the easement shall not unreasonably interfere with the use of the improved Common Area as a driveway for pedestrian ingress and egress to the HGI Project or with the normal operation of any business in the HGI Project. All Owners agree to endeavor to implement the extension of utility services in the Common Area for which they have a common use, in a manner to enable a minimum amount of interference to exist with respect to the Common Area and to implement cost sharing to reduce the actual cost of installation for each Owner. Each grantee(s) shall share all costs related to the installation, operation, maintenance, repair and replacement of such common utility services within the easement area that serves such grantee(s), on an equal basis and shall bear all costs for the extension of such services beyond the location in the Common Area to the extent that such services are exclusively for the grantee. The Common Area shall be returned to its prior condition in the event of damage resulting from such use and shall provide as-built plans for all such Utility System to the Owners of all Lots upon which such Utility System is located within thirty (30) days after the date of completion of construction of any such Utility System.



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- 3.2.2. At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any Utility System installed pursuant to the foregoing grant of easement which is then located on the Lot of such Owner, provided that any such relocation: (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Lots served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility; (iv) shall be performed without cost or expense to the Owner or occupant of any other Lot; and (v) shall provide for the original and relocated area to be restored to its prior condition. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Lots served by such utility lines and facilities within thirty (30) days after the date of completion of any such relocation.
- 3.2.3. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.
- 3.3. Signs. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Lot belonging to the other Owners, as grantees, an easement under, through and across the Common Area of the grantor's Lot(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 and all utility lines and facilities appurtenant thereto. The grantee of such sign easement shall repair the Common Area to its prior condition in the event of damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such facilities are located within thirty (30) days after the date of completion of construction of the same.
- 3.4. Building Encroachments. Building encroachments are not allowed.
- 3.5. Fire and Emergency Access. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Lot belonging to the other owners, as grantees, a nonexclusive easement for fire protection and emergency access for pedestrian and vehicular access, ingress and egress over, across, on and through the Lots for the benefit of the Owners consistent with providing the HGI Project with such fire and emergency access as is required by law.
- 3.6. Reservation of Utility and Driveway Easements by Declarant. Declarant has expressly reserved unto itself and its assigns a private utility easement for the installation, operation, maintenance and repair of utility services through Lots 1 through 3 to permit the orderly extension and utilization of all utility services, including, but not limited to, water, sewer, gas, power or phone lines or fiberoptic lines to serve the adjacent development property of Declarant. Said private utility easement may also be assigned by Declarant as it pertains to utility services to the Owner of the Doering property adjacent to and immediately east of Declarant's property to service its sign pad as a part of an exchange between Declarant and such property owner in conjunction with the development of Declarant's property. While Declarant reserves the absolute and sole discretion regarding all locations for its reserved utility easements, Declarant agrees to endeavor to locate such reserved utility easements in a manner that will not adversely impact any lot owner's construction of its restaurant building at the designated site or approved site within the Building Lot on Exhibit A. Such reserved easements will also be reflected upon and implemented as a part of the final platting of each lot by Declarant. Declarant also reserves an easement for the property encompassed within the private common access roads through its property which are intended to serve as the primary means for vehicular ingress and egress between Howard Raser Drive and Stockyard Road, and to grant the use of such driveway to the adjacent Doering property as a part of its exchange transaction in conjunction with the development of its property as long as the property owner agrees to pay its proportional cost of maintaining, replacing and insuring the private common access road and/or such other common area costs which in Declarant's sole judgment are fair and reasonable.

4. OPERATION OF COMMON AREA

- 4.1. Parking. There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owner, to the extent permitted by law and unless otherwise required by law. Additionally, there shall be no charge for parking which occurs as an incident of and in accordance with the reciprocal cross parking easement of the Owners.
- 4.2. Employee Parking. Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the HGI Project may be designated within the HGI Project from time to time by Consenting Owners, or if not by the Consenting Owners, by the individual Lot Owners with the prior written consent of the Consenting Owners. Employees of occupants of the HGI Project must park on their employer's Lot unless otherwise designated by the Consenting Owners. Consenting Owners reserve the right to designate common employee parking at and upon remote areas of the project in order to minimize conflict with



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parking by customers of the businesses occupying the facilities located within the project. In the event employee parking areas are designated as provided herein, then employees of any occupant of any part of the HGI Project shall use only those portions of the Common Area designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the HGI Project.

4.3. Signs.

- 4.3.1 Subject to governmental approval and provided the amount of signage otherwise permitted by governmental authority for Marquee signs does not exceed the limitations imposed by applicable governmental authority, Western Hospitality Group, LP intends to erect one (1) marquee sign on a sign pad located on property to be designated as part of the "Common Area" adjacent to Howard Raser Drive advertising the businesses and operation on the Consenting Owner's development property, and that individual owners will have the ability to advertise the presence of its business thereon in a manner comparable to the owners of other restaurant pads. In all cases, language and format to be included for individual owner signage must be approved by Consenting Owner. In all cases, the size, location, style, language, format and dimensions of such individual owner's advertising on the marquee sign shall be subject to the Consenting Owner's review and approval.
- 4.3.2. Owners shall be permitted to have its own on-premises sign installed and maintained at its sole cost and expense, provided however, that such sign may not be a "pole sign" nor may any such sign be located on North Reserve Street. Provided further, that any on-premises sign for an Owner is subject to the review and written approval of Consenting owners. Owner's proposed on-premises sign shall be submitted to Consenting owners for its review and approval during the initial review period as provided. Provided further that proposed on-premises signs with respect to Lots 2 and 3 shall be submitted to Consenting Owner for its review and approval in a manner to assure that all signage issues are fully resolved prior to closing.
- 4.3.3 There shall be no other signs, except directional signs and signs on buildings, in the HGI Project without the approval of the Consenting Owner. All exterior building signs in the HGI Project shall be subject to the approval of the Consenting Owner.

- 4.4. Sales. No portion of the Common Area shall be used for the sale or display of merchandise without the approval of the Consenting Owner.

5. RESTRICTIONS ON USE

5.1. HGI Project Restrictions.

- 5.1.1. Lots 1 (Tract 2 of COS 5564) and 2 may each contain one (1) restaurant, provided that the building area on Lot 1 (Tract 2 of COS 5564) shall not exceed five thousand (5,000) square feet. The building area on Lot 2 shall not exceed three thousand eight hundred (3,800) square feet. Service offices, such as financial institutions, real estate brokers and title companies, shall also be permitted on Lots 2 and 3, provided that the same "building area" restrictions shall apply and provided further that any such use shall not increase the amount of parking space required to be provided to enable use of a building for any of those purposes. Lot 3 may contain one (1) restaurant and may also be utilized for service offices such as financial institutions, real estate brokers and title companies, as well as for any type of retail sale facility not otherwise prohibited by the terms of paragraph 5.1.2 hereof. With respect to Lots 1 and 2, Declarant has agreed that those lots shall have exclusive rights of use for purposes of constructing and operating particular types of restaurant facilities in the manner as more particularly set forth in the original conveyance of record for each such lot from Declarant, as Grantor, the terms and conditions of such exclusive rights of use as set forth in those conveyances being incorporated herein by reference as if set forth herein in full.
- 5.1.2. Except with respect to the Declarant/Consenting Owners' property, and then only in conjunction with the facilities associated with its hotel business, no part of the HGI Project shall be used, without the approval of the Consenting Owners, for the following: [a night club, stand alone bar, tavern, or cocktail lounge (unless in conjunction with a restaurant, brewpub or sportsbar), dance hall, billiard or pool hall, video game arcade]. No part of the HGI Project shall be used, without the approval of Consenting Owners, for the following: bowling alley, skating rink, massage parlor, the sale of adult products or pornographic materials, an adult book store or adult video store, automotive maintenance or repair facility (but an installation facility in connection with an electronics super store is allowed), junkyard, stockyard, warehouse, training or educational facility, theatre, auditorium, meeting hall, school, church or other place of public assembly, "flea market" any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, any central laundry or dry cleaning plant, or laundromat (provided, however, that this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities), gymnasium, health club, for the



renting, leasing, or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer, any veterinary hospital, animal raising facilities or pet shops, mortuary, or for industrial purposes. The phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers, but shall not include computer or musical instrument retail stores that conduct lessons on the equipment or instruments sold. The phrase "adult book store" or "adult video store" shall not prevent a full-line book store or a full-line video store from carrying adult materials (not for sale or rental to children under eighteen (18) years of age), so long as such materials are incidental to and represent no more than ten percent (10%) of the floor area and sales of a full-line book store or a full-line video store and are discreetly stocked and handled.

6. GENERAL PROVISIONS

- 6.1. Covenants Run With the Land. Each restriction, covenant, obligation, and easement on each Lot shall be a burden on that Lot, shall be appurtenant to and for the benefit of the other Lots and each part thereof and shall run with the land. Each and all of the easements, restrictions and rights granted or created herein are appurtenances to the affected portions of the HGI Project and none of the easements, restrictions and rights may be transferred, assigned or encumbered except as an appurtenance to such portions.
- 6.2. Successors and Assigns. This Declaration and the restrictions covenants, obligations, and easements created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any Person acquiring a Lot, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Lot or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot or portion thereof after the date of sale and conveyance of title.
- 6.3. Duration. Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof. Notwithstanding the termination of the Declaration:
 - 6.3.1. The easements for ingress and egress in this Declaration as depicted on Exhibit B, as well as the easements for cross-parking, shall survive the expiration of the term of this Declaration and be perpetual and run with the land forever, and
 - 6.3.2. Easements for an existing Pylon Sign and/or Monument Sign, utilities, and building encroachments as provided for in Article 3 in use at the time of the expiration of this Declaration shall continue for the remainder of the life or use of such signs, utility improvements and building encroachments and the replacements thereof. Each Consenting Owner shall be entitled to relocate, at its own expense, easements for utilities on its Lot after termination of this Declaration.
- 6.4. Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the Restrictions, covenants, obligations, or Easements contained in this Declaration, any or all of the Owners of the property included within the HGI Project shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.
- 6.5. Modification and Termination. This Declaration may not be modified in any respect whatsoever, or terminated, in whole or in part, except by the written approval of the Consenting Owners and then only by written instrument duly executed and acknowledged by a majority of the Consenting Owners and recorded in the office of the recorder of the county in which the HGI Project is located. No modification or termination of this Declaration shall affect the rights of any previously existing Lienholder unless the Lienholder consents in writing to the modification or termination.
- 6.6. Method of Approval. Approval or consent of the Consenting Owners (unless otherwise stated herein) shall mean the written approval or consent of a majority of the Consenting Owners, which majority must include Declarant for so long as Declarant remains a Consenting Owner,
- 6.7. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the



HGI Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

- 6.8. Breach Shall Not Permit Termination- It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.
- 6.9. Default. A Person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from receipt of written notice from any Owner specifying the particulars in which such Person has failed to perform the obligations of this Declaration, unless such Person, prior to the expiration of said thirty (30) days (ten (10) days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such Person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period provided such Person commences to rectify such particulars within said thirty (30) day period and thereafter diligently proceeds to rectify such particulars using good faith and its best efforts to rectify such particulars.

6.10. Notices.

6.10.1. All notices permitted or required to be given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the Person and address designated below or, in the absence of such designation, to the Person and address shown on the then current real property tax rolls of the county in which the HGI Project is located. All notices to Declarant shall be sent to the Person and address set forth below:

DECLARANT: Western Hospitality Group, LP
 Attention: Robert Voelker
 P.O. Box 16540
 Missoula, MT 59808
 Telephone: (406) 541-0600 Fax: (406) 541-0601

LOT 1 (Tract 2 of COS 5564) Hillfield Holding – Montana, LLC
 Attention: Robert Priest
 1565 West Hillfield Road
 Layton, UT 84041
 Telephone: (801) 444-0004 Fax: (801) 444-0003

LOT 2 BL Land Group #15 L.C.
 C/o Taylor, Adams, Lowe & Hutchinson, P.C.
 Attention: Pete Ennenga
 2180 South 1300 East, Suite 520
 Salt Lake City, UT 84106
 Telephone: (801) 486-1112 Fax: (801) 486-1198

The Person and address to which notices are to be given may be changed at any time by any Owner upon written notice to the other Owners. All notices given pursuant to this Declaration shall be deemed given upon receipt.

- 6.10.2. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 6.10.1, as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the Person or entity specified pursuant to Section 6.10.1 or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.
- 6.11. Waiver. The failure of a Person to insist upon strict performance of any of the obligations or Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed -a waiver of any subsequent breach or default in the performance of any of the obligations or Restrictions contained herein by the same or any other Person.



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- 6.12 Attorneys Fee. In the event of any controversy, claim or action being filed or Instituted to enforce or interpret any of the terms of this Declaration, the prevailing party will be entitled to receive from the other party all costs, damages, and expenses, including reasonable attorneys' fees (including reasonable costs and attorney's fees on any appeal or in bankruptcy), incurred by the prevailing party, whether or not such controversy or claim is litigated or prosecuted to judgment. The prevailing party will be that party who was awarded judgment as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by that party.
- 6.13 Severability. If any term or provision of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.
- 6.14 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners.
- 6.15 Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person, except as to an Owner or unless otherwise expressly provided herein.
- 6.16 Estoppel Certificate. Each Owner shall, upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Owner, issue to a prospective mortgagee or successor of such other Owner or to such other Owner, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:
 - (i) Whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Declaration, and if there are known defaults, specifying the nature thereof; and
 - (ii) Whether this Declaration has been assigned, modified or amended in any way by the requested Owner (and if it has, then stating the nature thereof); and (iii) Whether this Declaration is in full force and effect.

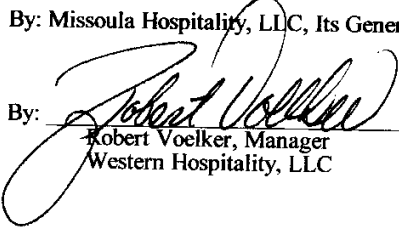
Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.
- 6.17. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- 6.18. Construction In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.
- 6.19 Joint and Several Obligations. In the event any Owner is composed of more than one Person, the obligations of said Owner shall be joint and several.
- 6.20. Exhibits and Recitals. The Recitals above and the Exhibits attached are incorporated herein and made a part hereof to the full extent as if each were set forth in its entirety in the body hereof,
- 6.21. Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the HGI Project is located.

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EXECUTED as of the day and year first above written.

Western Hospitality Group LP
a Montana limited partnership

By: Missoula Hospitality, LLC, Its General Partner

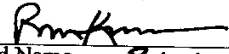
By: 
Robert Voelker, Manager
Western Hospitality, LLC

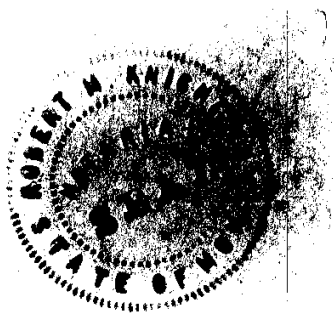
STATE OF MONTANA)
County of Missoula) ss.

On this 12th day of August in the year 2004, before me a Notary Public in and for the State of Montana, personally appeared Robert Voelker, known or identified to me to be the Manager of Missoula Hospitality, LLC, the company that is the General Partner of Western Hospitality Group LP, a Montana limited partnership, and who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)


Printed Name Robert M. Knigut
Notary Public for Montana
Residing at: Missoula Mt
My Commission expires: Jan 27, 2008



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Missoula County Vickie M Zeier COV

COS 1906

HOWARD RASER DRIVE

RESERVE STREET

FUTURE BUILDING

OUT PARCEL LOT 3

HILTON GARDEN INN

BOOK 358
 MICRO
 PAGE 196

CONFERENCE CENTER

FAZOLI'S

OUT PARCEL LOT 2

OUT PARCEL LOT 1

TRACT 2
 COS 5564

IHOP

FF 3216.0

TRACT E
 COS 3785

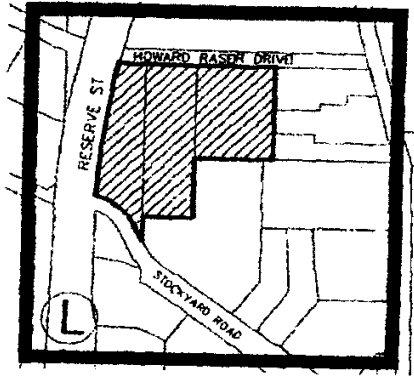
STOCKYARD ROAD

EXHIBIT A

SCHEDULE I

LEGAL DESCRIPTION OF THE HILTON GARDEN INN PROJECT

The Hilton Garden Inn Project consists of a Hotel, Conference Center, Blue Canyon Restaurant and three lots for restaurant pads with a private road for access running north/south from Stockyard Road to Howard Raser Drive.



All That Portion Of The NW 1/4 Of Section 8, T. 13 N., R. 19 W., Principal Meridian, Montana Included Within A Tract Of Land More Particularly Described As Follows:

Beginning At The Southwest Corner Of That Certain Lot Of Land Shown On Certificate Of Survey No. 1906 On File In Missoula County, Montana, Said Point Of Beginning Also Being The Northeast Corner Of Tract B Of Certificate Of Survey No. 4137 On File In Missoula County, Montana; Thence N 89°23'35" E Along The Southerly Line Of Said Lot Shown In Certificate Of Survey No. 1906, 513.19 Feet To The Northeasterly Corner Of That Certain Lot Of Land Described In Book 358 Micro, Page 196 Records Of Missoula County, Montana; Thence S 00°03'33" E Along The Easterly Line Of Said Lot Recorded In Book 358 Micro, Page 196, 370.75 Feet To The Southeasterly Corner Thereof; Thence S 89°18'44" W, 317.94 Feet To The Easterly Line Of That Certain Lot Described In Book 406 Micro, Page 1244, Records Of Missoula County, Montana, Thence S 00°32'17" E Along Said Easterly Line 240.84 Feet To The Southeasterly Corner Of Last Said Lot; Thence S 89°27'43" W Along The Southerly Line Of Last Said Lot 194.50 Feet To The Easterly Line Of Said Trace B; Thence S 00°29'54" E Along Last Said Easterly Line 96.91 Feet To A Point On A Non-Tangent Curve Concave To The Northeast And Having A Radius Of 510.00 Feet, Said Curve Being On The Northerly Right-Of-Way Line Of Stockyard Road, A Radial Line To Last Said Point Bears S 58°43'26" W"; Thence Northwesterly Along Said Curve An Arc Distance Of 65.82 Feet To A Point On A Reverse Curve Concave Southwesterly And Having A Radius Of 210.00 Feet; Thence Northwesterly Along Said Reverse Curve An Arc Distance Of 197.39 Feet To The Southwesterly Corner Of Tract B Of Said Certificate Of Survey No- 4137, Said Southwesterly Corner Also Being A Point On A Non-Tangent Curve Concave To The East And Having A Radius Of 2765.00 Feet, A Radial Line To Last Said Non-Tangent Curve Bears N 88°15'23" W; Thence Northerly Along Last Said Non-Tangent Curve, An Arc Distance Of 508.35 Feet; Thence N 56°58'55" E, 47.91 Feet To A Point On The Northerly Line Of Said Tract B And A Non-Tangent Curve Concave To The North And Having A Radius Of 330 Feet, A Radial Line To Last Said Point Bears S 02°31'37" W; Thence Easterly Along Last Said Nontangent Curve And The Northerly Line Of Said Tract B, An Arc Distance Of 18.05 Feet; Thence N 89°23'35" E Along The Northerly Line Of Said Tract B, 50.55 Feet To The Point Of Beginning, Containing 7.477 Acres, More Or Less.

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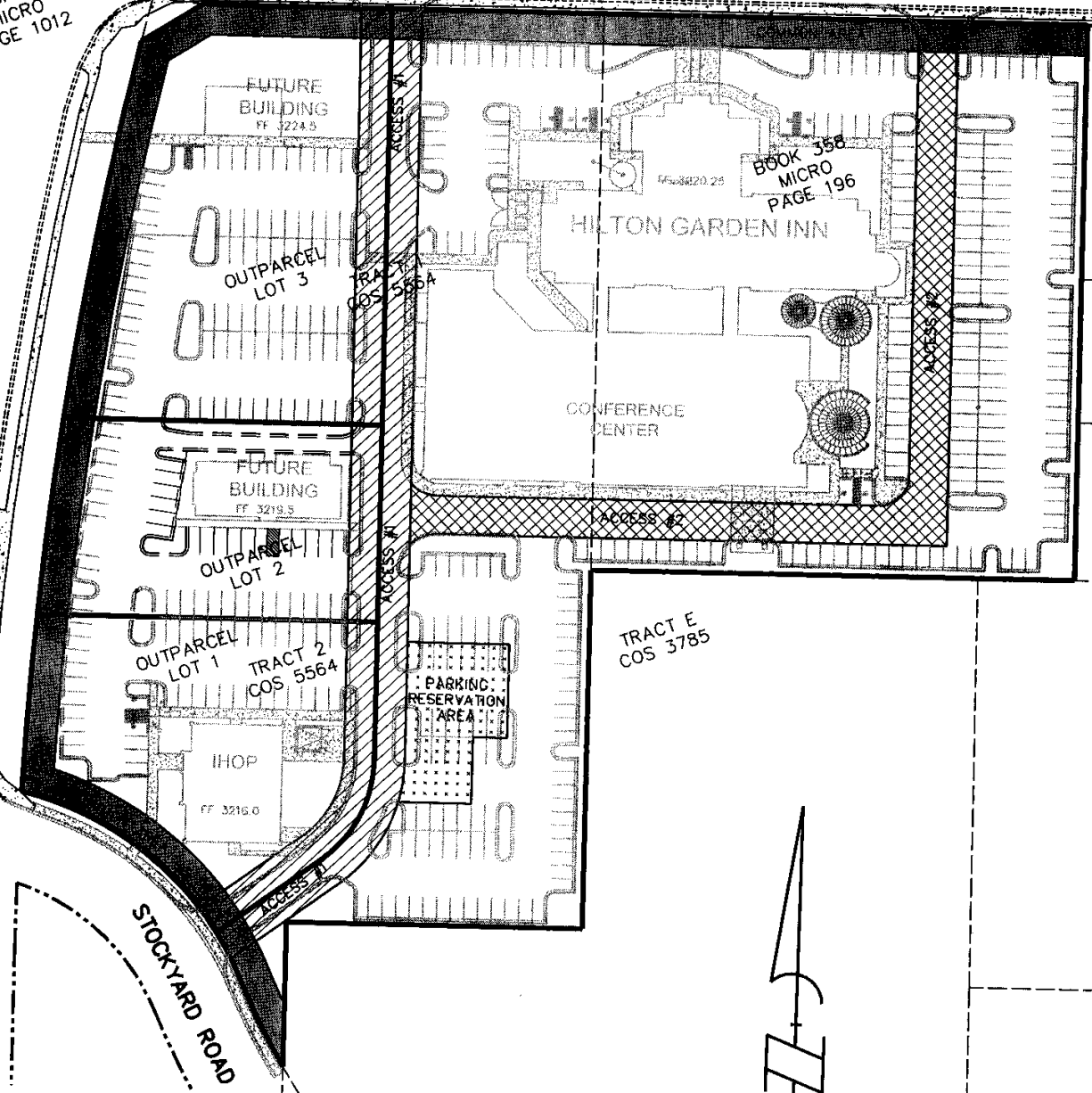
Missoula County Vickie M Zeier COV

BOOK 517
MICRO
PAGE 1012

COS 1906

HOWARD RASER DRIVE

RESERVE STREET



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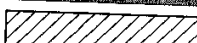

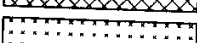
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LEGEND

-  COMMON AREA
-  ACCESS #1 TO BE USED IN COMMON
-  ACCESS #2 TO BE USED IN COMMON
-  PARKING RESERVATION AREA

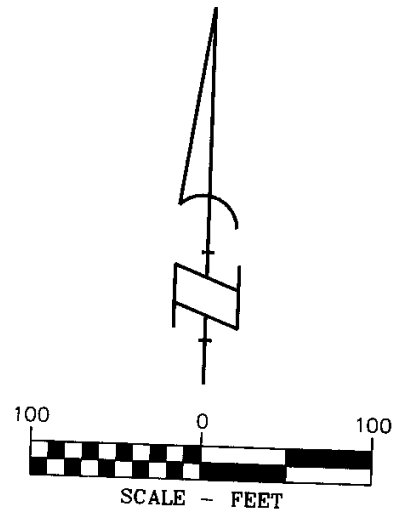


EXHIBIT B
LOCATED IN THE NW 1/4 OF SECTION 8,
T. 13 N., R. 19 W., P.M., M.
MISSOULA COUNTY, MONTANA

DRAFT: EDI

WGM GROUP, INC.
ENGINEERING • SURVEYING • PLANNING
3021 Palmer • (406) 728-4611
P.O. Box 16027 • Missoula, MT 59808

DATE: 08/13/04
PROJECT: 03-06-14

030614E3.DWG

SCHEDULE II
LEGAL DESCRIPTIONS OF LOTS

Lot A: will be subject to a plan of subdivision. It is noted as Lot 3 on Exhibit A with a Fifty One thousand two hundred and twelve (51,212) square foot parking lot for 84 cars and a building of Six thousand five hundred (6,500) square feet. This Lot is located in the northwest corner of the Hilton Garden Inn project adjacent to North Reserve Street and Howard Raser Drive, Missoula, Montana. The actual number of parking stalls and building dimensions may change when the specific use is determined.

Lot B: is noted as Lot 2 on Exhibit A with a Twenty Eight thousand six hundred and eight two (28,682) square foot parking lot for 44 cars and 2 partial parking stalls, a Three thousand eight hundred (3,800) square foot building. This Lot is located on the western boundary of the subject property with frontage on North Reserve Street between Howard Raser Drive and Stockyard Road, Missoula, Montana.

Lot C: is noted as Lot 1 on Exhibit A and as has been created of record as Tract 2 of COS 5564, records of Missoula County, Montana, with a Thirty Six thousand four hundred and eighteen (36,418) square foot parking lot with a building of Five thousand (5,000) square feet for 42 cars and 1 partial parking stall. This Lot is located on the Southwest corner of the Hilton Garden Inn Project at the intersection of Stockyard Road and North Reserve Street, Missoula Montana.



PA 7-
mon

MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS

This modification is of the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS dated and executed on August 12, 2004, is made as of the 30 day of August, 2006, by Western Hospitality Group, LP, a Montana limited partnership ("Declarant").

As Consenting Owner and in consideration of the resale of Outparcel 2 (Lot 1B, COS 5604) to Montana First Credit Union, Declarant modifies the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS as follows:

2.3.1.: (1) The following sentence shall be added after the first sentence in the first paragraph:

The Owner of Lot 2 (Lot 1B, COS 5604) shall submit an architectural concept plan to the Consenting Owner within 90 days of closing.

(2) The following sentence is added at the end of the second paragraph:

The 3,800 square foot building limitation shall not include the square footage necessary for construction of three-lane drive up windows.

4.3.2.: The following sentence shall be added at the end of this paragraph:

The owner of Lot 2 (Lot 1B, COS 5604) is permitted to have signage on its building on the exterior walls, including the exterior wall facing North Reserve Street.

5.1.1.: The second sentence of the paragraph is deleted and replaced with the following:

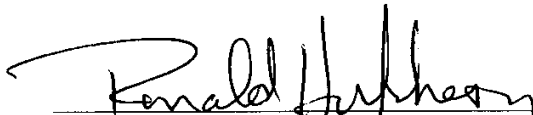
The building area on Lot 2 (Lot 1B, COS 5604) shall not exceed three thousand eight hundred (3,800) square feet, except that the area required for the construction of three-lane drive up windows shall not be included in the three thousand eight hundred (3,800) square foot limitation. That is, the building area including three-lane drive windows may exceed three thousand eight hundred (3,800) square feet.

All other provisions of the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS remain as originally stated.

Executed as of the date and year above written.

Western Hospitality Group, LP,
A Montana limited partnership

By Missoula Hospitality, LLC,
Its General Partner


By Ronald Hutcheson, Authorized Member

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NS
Km

After Recording Return To:

Gary B. Chumrau
Garlington, Lohn & Robinson, PLLP
199 West Pine • P.O. Box 7909
Missoula, MT 59807-7909



①
**SECOND MODIFICATION OF
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND
GRANT AND RESERVATION OF EASEMENTS**

THIS SECOND MODIFICATION is made and entered into as of the 17 day of May, 2007 by WESTERN HOSPITALITY GROUP, LP, a Montana limited partnership of Missoula, Montana (“Declarant”).

RECITALS

A. Declarant is the developer of the Hilton Garden Inn Project (“HGI Project”) located near the intersection of Reserve Street and Howard Raser Drive in the City of Missoula, Montana.

B. In connection with the development of the HGI Project, Declarant prepared and recorded a Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of Easements (the “Declaration”) dated the 12th day of August, 2004, and recorded on August 25, 2004 in Book 738, Page 1015, Instrument No. 200424360 of Micro Records of Missoula County, Montana.

C. The Declaration covered the HGI Project hotel parcel as well as three (3) contiguous parcels to be developed as restaurant parcels (or other limited commercial uses acceptable to Declarant) and described as Lots 1, 2 and 3 in the Declaration.

D. The Declarant as the "Consenting Owner" under the Declaration has prepared and recorded a Modification of Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements dated August 30, 2006, and recorded September 5, 2006 in Book 782, Page 710, Instrument No. 200622670, Micro Records of Missoula County, Montana, in connection with the sale of Lot 2 of the HGI Project (Lot 1B, COS 5604) to Missoula First Credit Union ("Modification No. 1").

E. Declarant owns two (2) contiguous parcels of property to the south of the HGI Project which additional property Declarant (as "Consenting Owner") wishes to add to the coverage of the Declaration as part of the overall HGI Project, on the terms and conditions contained in this Second Modification

TERMS

NOW, THEREFORE, for and in consideration of adding the new parcel to the coverage of the Declaration and for other good and valuable consideration, the Declarant as "Consenting Owner" hereby further amends the Declaration as follows:

1. The Declaration is hereby further amended by expanding its coverage to include the new contiguous parcels (together the "New Parcel") particularly described as follows:

Parcel I

A tract of land located in the NW1/4 of Section 8, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana, being more particularly described as Tract E2 of Certificate of Survey No. 5817.

Parcel II

Lot 1 of RASER COMMERCIAL TRACTS NO.1, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

The intent of the Declarant and the purpose of this Second Modification is to provide that the HGI Project (i.e. the hotel parcel and Lots 1, 2 and 3 described in the Declaration), as well as the New Parcel are to be covered and governed by the terms of the Declaration in all respects, except as the Declaration is modified with respect to the New Parcel as expressly set forth in this Second Modification. Each respective parcel of property in the HGI Project development will be subject to the terms and conditions of the Declaration as amended with respect to each of the other parcels.

*Second Modification of Declaration of Covenants, Conditions, Restrictions
and Grant and Reservation Easements*

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Missoula County Vickie M Zeier COV Bk-802 Pg-1146

2. Without limiting the generality of the application of the Declaration to all parcels as provided in Paragraph 1, the Declaration is specifically amended with respect to the New Parcel to provide as follows:

2.1 The definition of "Lot" in Section 1.1.12 is modified to include the New Parcel.

2.2 The definition of "HGI Project" in Section 1.1.16 is modified to include the New Parcel.

2.3 Section 2.1 of the Declaration is revised with respect to the New Parcel only to read as follows:

"2.1 Building Location. All buildings and other improvements constructed or to be constructed on the New Parcel shall be constructed or maintained in accordance with all applicable federal, state and local laws, rules, regulations, codes and ordinances (including all building code and safety code and set back requirements and sign ordinances), as well as with the terms and conditions of the Declaration. Specifically with respect to any applicable parking requirements and/or criteria ("Parking Requirements") in connection with any construction of any improvements on and any future use of the New Parcel, the Owner of the New Parcel must satisfy or meet any such Parking Requirements solely by using or relying on parking available on the New Parcel only (i.e. the New Parcel shall not be entitled to satisfy or avoid any Parking Requirements by using or relying on any parking available on any of the other parcels in the HGI Project created by reason of the cross or reciprocal parking easements granted by the terms of the Declaration). The New Parcel must stand on its own to satisfy any Parking Requirements with respect to gaining approval for any use or the construction of improvements on the New Parcel. The cross and reciprocal parking easements are intended as a benefit and convenience to the various parcels in the HGI Project, but are not intended to be relied upon to allow the Owners of the New Parcel to support expanded use of or construction on the New Parcel by availing themselves of the cross or reciprocal parking easements on the other parcels to satisfy Parking Requirements for the expected use of the New Parcel. The Declarant agrees that the requirement as stated above that the New Parcel must stand on its own to satisfy the Parking



Requirements shall likewise apply to any construction of any future improvements on and future use of the hotel parcel of the HGI Project. The Owner of the New Parcel agrees at all times to maintain the parking areas, exterior lighting, signage, landscaping, building and other improvement exteriors in a first-class condition, including the obligation to periodically repair, maintain and replace improvements as needed to maintain a first-class condition.”

2.4 Section 2.3.1 is revised with respect to the New Parcel only to read as follows:

“2.3.1 All buildings, structures and other improvements of any kind now or in the future constructed or maintained on the New Parcel shall be of first-class quality construction and architecturally designed so that its exterior elevations (including without limitation signs and quality of materials) will be architecturally and aesthetically compatible with other buildings and improvements in the HGI Project and surrounding areas. All refuse disposal or comparable facilities outside of the buildings shall be screened from view with an enclosure constructed of materials comparable to the exterior finish and color. At all times the Owner of the New Parcel shall be required to keep the New Parcel free of debris, garbage, refuse, trash and all storage shall be done in an orderly fashion to avoid an unsightly condition. The Owner of the New Parcel shall not allow any activity on the New Parcel that may be or may become a nuisance to the other Owners or the surrounding area.”

2.5 Section 5.1.2 is modified with respect to the New Parcel only to provide that the restrictions prohibiting a night club, stand alone bar, tavern or cocktail lounge are deleted. The other use restrictions shall remain in place but shall be expanded to prohibit a hotel or motel. The use restrictions shall be further expanded to specifically prohibit the use of the New Parcel for any immoral or unlawful activity, which for these purposes include a topless bar, strip club or other similar adult entertainment facility.

3. Except as expressly modified or amended by the terms of this Second Modification, the terms, conditions and all other provisions of the Declaration (as modified by Modification No. 1) shall remain in full force and effect and are hereby ratified by the Declarant.



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07/16/2009 03:23:09 PM Covenants
Vickie M Zeier, Missoula County Clerk & Recorder



After Recording Return To:

Gary B. Chumrau
Garlington, Lohn & Robinson, PLLP
199 West Pine • P.O. Box 7909
Missoula, MT 59807-7909

**THIRD MODIFICATION OF
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND
GRANT AND RESERVATION OF EASEMENTS**

THIS THIRD MODIFICATION is made and entered into as of the 3rd day of June,
2009 by WESTERN HOSPITALITY GROUP, LP, a Montana limited partnership of Missoula,
Montana ("Declarant").

RECITALS

A. Declarant is the developer of the Hilton Garden Inn Project ("HGI Project")
located near the intersection of Reserve Street and Howard Raser Drive in the City of Missoula,
Montana.

B. In connection with the development of the HGI Project, Declarant prepared and
recorded a Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of
Easements (the "Declaration") dated the 12th day of August, 2004, and recorded on August 25,
2004 in Book 738, Page 1015, Instrument No. 200424360 of Micro Records of Missoula County,
Montana.

C. The Declaration covered the HGI Project hotel parcel as well as three (3)
contiguous parcels to be developed as restaurant parcels (or other limited commercial uses
acceptable to Declarant) and described as Lots 1, 2 and 3 in the Declaration.

D. The Declarant as the "Consenting Owner" under the Declaration has prepared and recorded a Modification of Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements dated August 30, 2006, and recorded September 5, 2006 in Book 782, Page 710, Instrument No. 200622670, Micro Records of Missoula County, Montana, in connection with the sale of Lot 2 of the HGI Project (Lot 1B, COS 5604) to Missoula First Credit Union ("Modification No. 1").

E. Declarant owned two (2) contiguous parcels of property to the south of the HGI Project which additional property Declarant (as "Consenting Owner") added to the coverage of the Declaration as part of the overall HGI Project, on the terms and conditions contained in a Second Modification of Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements dated May 17, 2007, and recorded August 1, 2007 in Book 802, Page 1146, Instrument No. 200719744, Micro Records of Missoula County, Montana "Second Modification").

F. The Declaration provides in Schedule II that Lot 3 (as defined in Section 1.1.12 and as shown in Exhibit A and as described in Schedule II of the Declaration) "will be subject to a plan of subdivision.

G. Lot 3 was a part of Tract 1A-2A of Certificate of Survey No. 5958. The Declarant is now subdividing Tract 1A-2A into two (2) newly created lots to be known as Lot 1 and Lot 2 of MISSOULA HILTON, a subdivision of the City of Missoula, County of Missoula, Montana, according to the official recorded plat thereof ("Lot 1 and Lot 2 of Missoula Hilton").

H. Lot 1 and Lot 2 of Missoula Hilton will encompass all of Lot 3 and the Hotel Lot Area (as described and defined in the Declaration), as well as some additional property not currently included within the coverage of the Declaration, which additional property is located to the south of the Hotel Lot Area and was previously added to Tract 1A-2A as a result of a boundary re-location.

I. Declarant (as "Consenting Owner") wishes to amend the Declaration by expressly adding Lot 1 and Lot 2 of Missoula Hilton to its coverage (which will include the former Lot 3 and the Hotel Lot Area, as well as the additional property), and by adding new provisions required by the City of Missoula as conditions of approval of the Missoula Hilton Subdivision.

TERMS

NOW, THEREFORE, for and in consideration of adding the additional parcel to the coverage of the Declaration and for other good and valuable consideration, the Declarant as "Consenting Owner" hereby further amends the Declaration as follows:

1. The Declaration is hereby further amended by expanding its coverage to include the real property particularly described as follows:

Lot 1 and Lot 2 of MISSOULA HILTON, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

The intent of the Declarant and the purpose of this Third Modification is to provide that the HGI Project (i.e. the hotel parcel and Lots 1, 2 and 3 described in the Declaration, as well as the New Parcel added to coverage by the terms of the Second Modification) is amended to also include Lot 1 and Lot 2 of Missoula Hilton, which Lots are also to be covered and governed by the terms of the Declaration in all respects, except as the Declaration was modified with respect to the New Parcel as expressly set forth in the Second Modification. Each respective parcel of property in the HGI Project development will be subject to the terms and conditions of the Declaration as amended with respect to each of the other parcels.

2. Without limiting the generality of the application of the Declaration to all parcels as provided in Paragraph 1, the Declaration is specifically amended with respect to Lot 1 and Lot 2 of Missoula Hilton to provide as follows:

2.1 The definition of "Lot" in Section 1.1.12 is modified to include Lot 1 and Lot 2 of Missoula Hilton, it being understood that Lot 1 and Lot 2 of Missoula Hilton encompass "Lot 3" and the Hotel Lot Area that were already included within the coverage of the Declaration, but are now part of the new legal description by virtue of the Missoula Hilton subdivision.

2.2 The definition of "HGI Project" in Section 1.1.16 is modified to include Lot 1 and Lot 2 of Missoula Hilton.

2.3 Article 2 is amended to add a new Section 2.7 to cover signage on Lot 1 and Lot 2 of Missoula Hilton as follows:

"2.7 Address Signs. Each business must install an address sign at least six inches in height that is clearly visible from the street. During construction, temporary signs are allowed, but shall properly display the property address for construction purposes."

2.4 Article 2 is further amended to add a new Section 2.8 to provide for road maintenance within Lot 1 and Lot 2 of Missoula Hilton as follows:

“2.8 Private Road Maintenance. The purchaser and/or owner of all or any portion of Lot 1 or Lot 2 of Missoula Hilton, understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or the Hilton Garden Inn of Missoula Owners Association, Inc. (“Association”), and that the City of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the City of Missoula for maintenance. Such road maintenance is the obligation of the Association, and covered by the Declaration and the Code of Regulations of the Association (which constitutes a private road maintenance agreement), a copy of which is attached hereto as Exhibit “2.8” and by this reference made a part hereof.”

2.5 In connection with the creation of Lot 1 and Lot 2 of Missoula Hilton, a new Section 3.7 is added with respect to the granting of utility easements:

“3.7. Utility Easements. The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities in, over, under, and across each area designated on the Missoula Hilton Subdivision Plat as “Utility Easement” to have and to hold forever.”

2.6 Article 5 is amended by adding the following new sections with respect to disclosures and use restrictions related to Lot 1 and Lot 2 of Missoula Hilton as follows:

“5.1.3 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.

5.1.4 Weed Control. Lot owners shall maintain their property in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate all ground disturbances with beneficial species at the first appropriate opportunity after the disturbance occurs.

5.1.5 Wildlife. Wildlife is an important amenity of the area in which the Missoula Hilton Subdivision is located. Owners are responsible for

living in harmony with wildlife, including maintaining appropriate measures for protecting vegetation, confining pets, and storing garbage, pet food, and other potential wildlife attractants. The following provisions are designed to implement these purposes:

- (i) Owners should not feed or offer supplements (such as salt blocks, attractants, table scraps, or bait) to deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals leading to overuse of vegetation and disease transmission. Deer attract mountain lions, which pose a threat to humans. Feeding of wildlife also allows the wildlife to become accustomed to a human environment, which can be dangerous to humans, pets, and wildlife. Montana State law (MCA Section 87 -3-130) prohibits providing supplemental feed or attractants to wildlife which results in a concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.
- (ii) Pet food should be stored indoors or in animal resistant containers in order to avoid attracting bear, mountain lion, skunks, raccoons, or other wildlife.
- (iii) Gardens, fruit trees, and orchards attract wildlife. Produce should be harvested when ripe to prevent odor from rotting vegetation attracting bear or skunk. Fences intended to prevent entry by deer should be eight (8) feet or higher. Netting over gardens help deter birds.
- (iv) Bird feeders attract bear and should not be used from April through October.
- (v) Apiaries and beehives attract bear and should be avoided.
- (vi) The local offices of the Montana Department of Fish, Wildlife & Parks are located at 3201 Spurgin Road, Missoula, Montana, and should be consulted for further information on living with wildlife in rural Montana. A copy of the pamphlet Living with Wildlife -A Guide to Coexistence is available from the FW&P or the Office of Planning & Grants.

5.1.6 Wood Burning Stoves. Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves require an installation permit from the Health Department.”

2.7 Section 6.5 is amended by adding the following to the end of the paragraph:

“Notwithstanding the foregoing, the following Sections may not be amended or deleted without approval of the governing body and the City Attorney:

Section 2.7 Address Signs
Section 2.8 Private Road Maintenance
Section 3.7 Utility Easements
Section 5.1.3 Radon Mitigation
Section 5.1.4 Weed Control
Section 5.1.6 Wood Burning Stoves
Section 6.5 Modification and Termination (but only to the extent modified by this Section 2.7)
Section 6.22 RSID/SID”

2.8 Article 6 is amended by adding a new Section 6.22 as follows:

“6.22 RSID/SID. Acceptance of a deed for a lot within Lot 1 or Lot 2 of Missoula Hilton shall constitute the assent of the owners to any future RSID/SID, based on benefit, for the upgrading of Howard Raser Drive, Stockyard Road, and Reserve Street, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, and may be used in lieu-of-their signatures on an “RSID/SID petition.”

3. Except as expressly modified or amended by the terms of this Third Modification, the terms, conditions and all other provisions of the Declaration (as modified by Modification No. 1 and the Second Modification) shall remain in full force and effect and are hereby ratified by the Declarant (as Consenting Owner), including the provisions in Section 1.4 that state that the terms, easements and restrictions set forth in the Declaration, including those contained in this Third Modification, shall run with the land.

4. The above recitals are incorporated into this Third Modification.

IN WITNESS WHEREOF, the Declarant has executed this Third Modification as of the day and year first above written.

WESTERN HOSPITALITY GROUP, LP
a Montana limited partnership

By its General Partner
Missoula Hospitality, LLC

By [Signature]
Authorized Member

STATE OF Ohio)
County of Summit) :SS

On ~~May~~ ^{June} 3, 2009, before me Gina M. Brundage, Notary Public, personally appeared Robert F. Voelker, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as an Authorized Member of Missoula Hospitality, LLC, as the General Partner of Western Hospitality Group, LP.

WITNESS my hand and official seal.



Gina M. Brundage
Resides: Summit County
Notary Public, State of Ohio
My Commission Expires: 01/28/2014

Gina M. Brundage
Printed Name Gina M. Brundage
NOTARY PUBLIC FOR THE STATE OF OH
Residing at Twinsburg, OH
Commission Expires 01/28/2014

Exhibit 2.8

CODE OF REGULATIONS OF HILTON GARDEN INN OF MISSOULA
OWNERS ASSOCIATION, INC.

ARTICLE I
ASSOCIATION OF OWNERS

Hilton Garden Inn of Missoula, a commercial development located in the City of Missoula, Missoula County, Montana (the "Development"), shall be administered by an association which shall be a not-for-profit corporation, hereinafter called the "Association," organized under the applicable laws of the State of Montana, and responsible for the management, maintenance, operation and administration of the Common Areas, easements, and affairs of the Development. The Association shall be vested with the powers set forth herein and in the Declaration of Covenants, Conditions, and Restrictions for Hilton Garden Inn of Missoula (the "Declaration") as recorded with the Missoula County Recorder. As used herein, terms defined in the Declaration shall have the same meaning ascribed to therein unless otherwise defined herein. Owners of real estate in the Development shall be entitled to membership, and no other person or entity shall be entitled to membership. In the event that a parcel of real estate in the Development is owned jointly or in common by more than one person or entity, only one membership shall be allocated to such parcel of real estate. The share of a member of the Association in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner, except as an appurtenance to the real estate owned by such member. All owners of real estate and all persons using or entering upon or acquiring any interest in any portion of the Development or the Common Areas shall be subject to the provisions and terms set forth herein. The developer of the Development is Western Hospitality Group, LP, a Montana limited partnership, and it, together with its successors and assigns, is referred to herein as the "Developer."

ARTICLE II
ASSESSMENTS

All expenses arising from the management, administration and operation of the Association in pursuance of its responsibilities as set forth herein shall be levied by the Association against the members in accordance with the following provisions:

Section 1. Determination of Assessments. Assessments shall be determined in accordance with the following provisions:

(a) Budget. The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the common elements of the Development, including a reasonable allowance for contingencies and reserves. An adequate reserve fund for maintenance, repairs and replacement of those Common Areas that must be replaced on a periodic basis shall be established in the budget and must be funded by regular periodic payments as set forth in Section 2(a) below, rather than by special assessments. At a minimum, the reserve fund shall be up to ten percent (10%) of the Association's current annual budget. Upon adoption of an annual budget by the Board of Directors, copies of the budget shall be delivered to each member and the assessment for said year shall be established based upon said budget, although the failure to deliver a copy of the budget to each member shall not affect or in any way diminish the liability of any member for any existing or future assessments. Should the Board of Directors at any time decide, in the sole discretion of the Board of Directors: (1) that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Development; (2) to provide replacements of existing Common Areas; (3) to provide additions to the Common Areas not exceeding (\$25,000.00) annually for the entire Development; or (4) that an emergency exists, then the Board of Directors shall have the authority to increase the budget as it shall be deemed necessary. The Board of Directors also shall have the authority, without the consent of the members, to levy assessments pursuant to the provisions of this Article II. The discretionary authority of the Board of Directors to levy assessments pursuant to this subparagraph shall rest solely with the Board of Directors for the benefit of the Association and the members thereof, and shall not be enforceable by any creditors of the Association or by the members thereof.

*Third Modification of Declaration of Covenants, Conditions, Restrictions
and Grant and Reservation Easements*

*Exhibit 2.8
Page 8 of 20*

(b) Special Assessments. Special assessments for purposes set forth in the Declaration, in addition to those required in subparagraph (a) above, may be made by the Board of Directors from time to time and approved by the members as hereinafter provided to meet other requirements of the Association, including, but not limited to: (1) assessments for additions to the Common Areas of a cost exceeding Twenty-five Thousand Dollars (\$25,000.00) per year for the entire Development; (2) assessments to purchase real estate upon foreclosure of the lien for assessments described in Section 4(b) of this Article II; or (3) assessments for any other appropriate purpose not elsewhere herein described. Special assessments referred to in this subparagraph (b) (but not including those assessments referred to in subparagraph (a) above, which shall be levied in the sole discretion of the Board of Directors) shall not be levied without the prior approval of more than sixty percent (60 %) of all of the members. The authority to levy assessments pursuant to this subparagraph is solely for the benefit of the Association and the members thereof, and shall not be enforceable by any creditors of the Association or of the members thereof.

Section 2. Apportionment of Assessments and Penalty for Default.

(a) Apportionment. Unless otherwise provided herein, all assessments levied against the members to cover expenses of administration shall be apportioned among and paid by the members in accordance with the amount of real estate each owns in the Development. Any other unusual common expenses benefitting less than all of the real estate, or any expenses incurred as a result of the conduct of less than all those entitled to occupy the Development, or their tenants or invitees, shall be specifically assessed against the real estate involved, in accordance with such reasonable rules and regulations as shall be adopted by the Board of Directors of the Association. Annual assessments as determined in accordance with Section 1(a) of this Article II shall be payable by members in one (1) annual installment, commencing with and prorated based upon the acquisition of fee simple title to a parcel in the Development. The payment of an assessment shall be in default if such assessment, or any part thereof, is not paid to the Association in full on or before the due date for such payment.

(b) Each installment in default for ten (10) or more days shall bear interest from the initial due date thereof at the rate of ten percent (10 %) per annum, plus such additional interest rate surcharge as the Board of Directors shall approve, until each installment is paid in full; provided, however, that the sum of the interest rate and interest rate surcharge applying to delinquent amounts shall not exceed the limit set by usury laws in the State of Montana. The Association may, pursuant to Section 1(b) of Article III below, levy fines for late payment of assessments in addition to such interest. Each member shall be, and remain personally liable for, the payment of all assessments pertinent to the real estate owned by such member, which may be levied while such member is the owner thereof. Payments on account of installments of assessments in default shall be applied as follows: First, to cost of collection and enforcement of payment, including actual reasonable attorney's fees (not limited to statutory fees); second, to any interest charges and fines for late payment on such installments; third, to installments in default in or of their due dates.

Section 3. Waiver of Use or Abandonment of Real Estate. No member may exempt such liability for the contribution owed by such member toward the expenses of administration by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the real estate owned by such member.

Section 4. Enforcement.

(a) Remedies. In addition to any other remedies available to the Association, the Association may enforce collection of delinquent assessments by a suit at law for a money judgment or by foreclosure of a lien securing payment of assessments. In the event of default by any member in the payment of any installment of the annual assessment levied against the real estate owned by such member, the Association shall have the right to declare all such unpaid installments of the annual assessment for the pertinent fiscal year immediately due and payable. A member in default shall not be entitled to utilize any of the Common Areas of the Development and shall not be entitled to vote at any meeting of the Association so long as such default continues; provided, however, this provision shall not operate to deprive any member of ingress or egress to and from the real estate owned by such member and the right to vote shall not be denied in the event an Owner is diligently pursuing resolution

of a bona fide dispute as to the validity or amount of the assessment in question. All of these remedies shall be cumulative and not in the alternative and shall not preclude the Association from exercising such other remedies as may be available at law or in equity.

(b) **Collection Proceedings.** Each member, and every other person who from time to time has any interest in the Development, shall be deemed to have granted to the Association the unqualified right to elect to foreclose on the lien securing payment of assessments and subject to notice as provided in Section 4(b) below, subject to any mortgage that is now or hereafter a lien against the subject premises, either by judicial action or by advertisement. The provisions of Montana law pertaining to foreclosure of mortgages by judicial action and by advertisement, as the same may be amended from time to time, are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligations of the parties to such actions. Further, each member and every other person who from time to time has any interest in the Development shall be deemed to have authorized and empowered the Association to sell or to cause to be sold the property with respect to which the assessment(s) is or are delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. Each owner of real estate in the Development acknowledges that, at the time of acquiring title to such real estate, such owner was notified of the provision of this subparagraph and that such owner voluntarily and knowingly waived notice of any proceedings brought by the Association to foreclose by advertisement the lien for nonpayment of assessments and a hearing on the same prior to the sale of the subject real estate.

(c) **Notice of Action.** Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for a money judgment shall be commenced until the expiration of ten (10) days after mailing, by first class mail, postage prepaid, addressed to the Delinquent Owner at the last known address of such member, of a written notice that one or more installments of the annual assessment levied against the pertinent real estate is or are delinquent and that the Association may invoke any of its remedies hereunder if the default is not cured within ten (10) days after the date of mailing. Such written notice shall be accompanied by a written affidavit of an authorized representative of the Association that sets forth: (1) the affiant's capacity to make the affidavit; (2) the statutory and other authority for the lien; (3) the amount outstanding (exclusive of interest, costs, attorneys' fees, and future assessments); (4) the legal description of the subject real estate(s); and (5) the name of the owner of record. If the delinquency is not cured within the ten (10) day period, the Association may take such remedial action as may be available to it hereunder or under Montana law.

(d) **Expenses of Collection.** The expenses incurred in collecting unpaid assessments, including interest, costs, actual reasonable attorneys' fees (not limited to statutory fees) and advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the member in default and shall be secured by the lien on the subject real estate.

Section 5. Statement as to Unpaid Assessments. The purchaser of any real estate in the Development may request a statement of the Association as to the amount of any unpaid assessments thereon, whether regular or special. Upon written request to the Association, the Association shall provide a written statement of such unpaid assessments as may exist or a statement that none exist, which statement shall be binding upon the Association for the period stated therein. Upon the payment of that sum within the period stated, the Association's lien for assessments as to such real estate shall be deemed satisfied; provided, however, that the failure of a purchaser to request such statement at least five (5) days prior to the closing of the purchase of such real estate shall render any unpaid assessments and the lien securing the same fully enforceable against such purchaser and the real estate itself.

Section 6. Lawsuit Defense Expenses. Any member bringing an unsuccessful lawsuit against the Association and/or the Board of Directors for the administration of the affairs of the Association shall be chargeable for all expenses incurred by the Association. Such expenses may be collected by the Association in the same manner as an assessment.

ARTICLE III HEARINGS

Section I. Hearing Procedure.

(a) Enforcement. In the event of a violation by a member or any tenant or other occupant of the Development of any of the provisions of these Regulations, the Board of Directors shall notify the member, and any such tenant or other occupant, of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the member or tenant or other occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Board of Directors may, at its option:

- (i) Impose a fine against the member as provided in Subsection (b) of this Section; and/or
- (ii) Commence an action to enforce performance on the part of the member, and to require the member to correct such failure or performance, or commence such other relief as may be necessary under the circumstances, including injunctive relief; and/or
- (iii) The Association may, following a hearing as provided for in Subsection (b) of this Section at which it is determined that the alleged violation did occur, itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to ten percent (10%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or
- (iv) Commence an action to recover damages or any other remedy available at law or in equity.

(b) Fines. The amount of any fine shall be a reasonable amount as determined by the Board of Directors. Prior to imposing any fine, the member shall be afforded an opportunity for a hearing after reasonable notice to the member of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of these Regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery are entered by the officer, Board of Directors member, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The member shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board of Directors shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board of Directors so determines, it may impose such fine as it deems appropriate by written notice to the member. If the member fails to attend the hearing as set by the Board of Directors, the member shall be deemed to have admitted the allegations contained in the notice to the member. Any fine levied against a member shall be deemed an assessment and if not paid when due, all of the provisions of these Regulations relating to the late payment of assessments shall be applicable.

(c) Negligence. A member shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement rendered necessary by his or her or its act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried

by the Association. Such liability shall include any increase in fire insurance rates occasioned by misuse, or abandonment of a building in the Development or its appurtenances or of the Common Areas.

(d) Responsibility of Members for Tenants. Each member shall be responsible for the acts and omissions, whether negligent or willful, of a tenant of the member and for all employees, agents and invitees of the member or any such tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association.

(e) Appeal. Following a hearing before a committee of the Board of Directors, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association within thirty (30) days after the date of receipt of the decision of the committee. No later than thirty (30) days after receipt of the notice of appeal, the Board of Directors shall review the minutes of the hearing. The affirmative vote of two-thirds (2/3) of the members of the Board of Directors shall be required to reverse or modify the decision of the committee.

(f) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of these Regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation, or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the member responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees, actually incurred by the Association in so acting to enforce such rights unless such member prevails in such action.

ARTICLE IV INSURANCE

Section 1. Extent of Coverage. The Association shall, to the extent appropriate given the nature of the Common Areas carry "all risk" property coverage and liability insurance, fidelity coverage, and workers' compensation insurance, if applicable, appurtenant to the ownership, use and maintenance of the Common Areas, and such insurance shall be carried and administered in accordance with the following provisions:

(a) Responsibilities of Association. All such insurance shall be purchased by the Association for the benefit of the Association and the members, as their interests may appear, and provision shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of members.

(b) Insurance of Common Elements. All Common Areas shall be insured against fire and other perils covered by a standard extended coverage endorsement, if appropriate, in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Directors of the Association.

(c) Premium Expenses. All premiums for insurance purchased by the Association pursuant to these Regulations shall be expenses of administration.

(d) Proceeds of Insurance Policies. Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account and distributed to the Association, and the members and their mortgagees, as their interests may appear; provided, however, whenever repair or reconstruction shall be required, the proceeds of any insurance received by the Association as a result of any loss requiring repair or reconstruction shall be applied to such repair or reconstruction and in no event shall hazard insurance proceeds be used for any purpose other than for repair, replacement or reconstruction of the Development unless members holding at least two-thirds (2/3) of the voting power of the Association have given their prior written approval for some other specific use or purpose.

Section 2. Authority of Association to Settle Insurance Claims. Each member shall be deemed to appoint the Association as the true and lawful attorney-in-fact of such member to act on behalf of the Association in connection with all matters concerning the maintenance of "all risk" property coverage, vandalism and malicious mischief, liability insurance, fidelity coverage and workers' compensation insurance, if applicable, pertinent to the Development and the Common Areas, and such insurer as may, from time to time, provide such insurance to the Development. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit premiums therefor, to collect proceeds and to distribute the same to the Association, the members and their respective mortgagees, as their interests may appear, to execute releases of liability, and to execute all documents and to do all things on behalf of such member and the Development as shall be necessary or convenient to the accomplishment of the foregoing.

Section 3. Responsibility of Members. Each member shall be obligated and responsible for obtaining blanket all risk casualty insurance and vandalism and malicious mischief insurance with respect to all improvements constructed or to be constructed within the perimeter of any portion of the Development owned by such member, and for the personal property of such member located therein or thereon or elsewhere on the Development. All such insurance shall be carried by each member in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs. The Association shall under no circumstances have any obligation to obtain any of the insurance coverage described in this Section 3 or any liability to any person for failure to do so.

ARTICLE V RECONSTRUCTION OR REPAIR

Section 1. Responsibility for Reconstruction or Repair. If any part of the Development shall be damaged, the determination of whether or not it shall be reconstructed or repaired, and the responsibility therefore, shall be as follows:

(a) Common Area. If the damaged property is a Common Area, the damaged property shall be rebuilt or repaired by the Association, unless members representing at least two-thirds (2/3) of the voting rights of the Association agree to the contrary.

(b) Other Improvements. If the damaged property is not a Common Area or any improvements thereon, the owner of such portion of the Development, subject to approval of the Board (if the damaged property is not to be returned to its original condition), alone shall determine whether to rebuild or repair the damaged property, subject to the rights of any mortgagee or other person or entity having an interest in such property, and shall be responsible for any reconstruction or repair that such owner elects to make. The owner shall, in any event, remove all debris and restore the property and the improvements thereon to a clean and sightly condition satisfactory to the Association as soon as reasonably possible following the occurrence of the damage.

Section 2. Repair. Any such reconstruction or repair shall be in accordance with the Declaration.

Section 3. Association Responsibility for Repair. Immediately after the occurrence of a casualty causing damage to Common Area property for which the Association has the responsibility for maintenance, repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that existing before the damage. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair required to be performed by the Association, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the cost thereof are insufficient, then, subject to the other provisions of these Regulations, assessment shall be made against all members for the costs of reconstruction or repair of the damaged property in sufficient amounts to provide funds to pay the estimated or actual cost of repair.

Section 4. Timely Reconstruction and Repair. If damage to the Common Areas adversely affects the appearance of the Development, the Association shall proceed with replacement of the damaged property without delay to every reasonable extent.

ARTICLE VI
FINANCE

Section 1. **Records.** The Association shall keep detailed books of account showing all expenditures and receipts of administration and which shall specify the maintenance and repair expenses of the Common Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts and all other Association records shall be open for inspection by the members and their mortgagees during reasonable working hours. The Association shall prepare and distribute to each member at least once a year a financial statement, the contents of which shall be defined by the Association. The books of account shall be audited at least annually by qualified independent auditors; provided, however, that such auditors need not be certified public accountants nor that such audit be a certified audit. Any institutional holder of a first mortgage lien on any portion of the Development shall be entitled to receive a copy of such annual audited financial statement within ninety (90) days following the end of the Association's fiscal year upon request therefore. The costs of any such audit and any accounting expenses shall be expenses of administration. If an audited statement is not available, any holder of a first mortgage on any portion of the Development shall be allowed to have an audited statement prepared at its own expense.

Section 2. **Fiscal Year.** The fiscal year of the Association shall be an annual period commencing on such date as may be initially determined by the Board of Directors. The commencement date of the fiscal year shall be subject to change by the Directors for accounting reasons or other good cause.

Section 3. **Bank.** Funds of the Association shall be initially deposited in such bank or savings association as may be designated by the Directors and shall be withdrawn only upon the check or order of such officers, employees or agents as are designated by resolution of the Board of Directors from time to time. The funds may be invested from time to time in accounts or deposit certificates of such bank or savings association as are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and may also be invested in interest-bearing obligations of the United States Government.

ARTICLE VII
MEETINGS OF MEMBERS

Section 1. **Annual Meetings.** Unless a different date is selected by the Board of Directors, annual meetings of members of the Association shall be held in the month of February, on such date and at such time and place as shall be determined by the Board of Directors. At such meetings there shall be elected by ballot of the members a Board of Directors in accordance with the requirements of Article IX of these Regulations. The members may also transact at annual meetings such other business of the Association as may properly come before them.

Section 2. **Special Meetings.** It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition, signed by one-third (1/3) of the members, presented to the Secretary of the Association. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3. **Notice of Meetings.** It shall be the duty of the Secretary (or other Association officer in the Secretary's absence) to serve a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, upon each member of record at least seven (7) days but not more than sixty (60) days prior to such meetings. The mailing, postage prepaid, of a notice to the representative of each member at the address shown in the notice, required to be filed with the Association by Article VIII, Section 3 of these Regulations, shall be deemed notice served. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, shall be deemed due notice.

Section 4. Adjournment. If any meeting of members cannot be held because a quorum is not in attendance, the members who are present may adjourn the meeting to a time not less than forty eight (48) hours from the time the original meeting was called.

Section 5. Order of Business. The order of business at all meetings of the members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of the preceding meeting; (d) reports of officers; (e) reports of committees; (f) appointment of inspectors of election (at annual meetings or special meetings held for the purpose of electing Directors or officers); (g) election of Directors (at annual meeting or special meetings held for such purpose); (h) unfinished business; and (i) new business. Meetings of members shall be chaired by the most senior officer of the Association present at such meeting. For purposes of this Section, the order of seniority of officers shall be President, Vice President, Secretary, and Treasurer. Any action required by law to be taken or which may be taken, at a meeting of the members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the members.

ARTICLE VIII VOTING

Section 1. Vote. Except as limited in these Regulations, each member, other than the Developer, shall be entitled to one vote for each 10,000 square feet (rounded to the nearest 10,000 square feet) in the Development owned or leased by the member but in no event shall square footage owned or leased by more than one member be entitled to more than one vote. Fractional voting shall not be permitted.

Section 2. Eligibility to Vote. No owner of a portion of the Development, other than the Developer, shall be entitled to vote at any meeting of the Association until such owner has presented evidence of ownership of such portion of the Development to the Association, such as a copy of a recorded deed or a signed land contract. A land contract vendee shall be considered the owner for voting purposes. The vote of each owner may be cast only by the individual representative designated by such owner in the notice required in Section 3 of this Article VIII or by a proxy given by such individual representative.

Section 3. Designation of Voting Representative. Each member shall file a written notice with the Association designating the individual representative who shall vote at meetings of the Association and receive all notices and other communications from the Association on behalf of such member. Such notice shall state the name and address of the individual representative designated, the real estate in the Development owned by the member, and the name and address of each person, firm, corporation, partnership, association, trust, or other entity who is the owner. Such notice shall be signed and dated by the member. The individual representative designated may be changed by the member at any time by filing a new notice in the manner herein provided.

Section 4. Quorum. Except as otherwise provided herein, the presence in person or by proxy of members holding at least one-third (1/3) of the voting power of the Association shall constitute a quorum at all meetings of the Association. The written vote of any person furnished at, or prior to any duly called meeting at which meeting said person is not otherwise present in person or by proxy, shall be counted in determining the presence of a quorum with respect to the question upon which the vote is cast.

Section 5. Voting. Votes may be cast only in person or by a writing duly signed by the designated voting representative not present at a given meeting in person or by proxy. Proxies and any written votes must be filed with the Secretary of the Association at or before the appointed time of each meeting of the members of the Association.

Section 6. Written Consent. Any action required by law to be taken or which may be taken, at a meeting of the members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the members.

**ARTICLE IX
BOARD OF DIRECTORS**

Section 1. Qualification of Directors. The affairs of the Association shall be governed by the Board of Directors. Directors must be members of the Association or officers, partners, Directors, employees, or agents of members of the Association. Directors shall serve without compensation.

Section 2. Number of Directors. The number of Directors of the Association shall be not less than three (3) nor more than seven (7). The initial Board of Directors shall be comprised of the Directors identified in the Articles of Incorporation of the Association.

Section 3. Election of Directors. At any election of Directors, the candidates receiving the largest number of votes shall be elected. Such election shall be by written secret ballot whenever requested by a member of the Association. If no such request is made, the election may be conducted in any manner approved at such meeting. The Directors shall be elected for two year terms and shall continue in office until their respective successors have been elected by the Association. A Trustee may be elected to serve any number of consecutive terms.

Section 4. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. The Directors may make and enforce reasonable rules and regulations governing the Common Areas. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board of Directors shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. A member shall be subject to the foregoing sanctions in the event of a violation by such member, or the employees, visitors or tenants of such member.

Section 5. Other Duties. In addition to the foregoing and the other powers, authority and responsibility provided for in these Regulations, the Board of Directors shall be responsible specifically for the following:

- (a) Maintaining insurance and collecting and allocating the proceeds thereof.
- (b) Engaging employees and agents, including without limitation, security personnel, attorneys, accountants, consultants, maintenance firms and contractors.
- (c) Delegating all or any portion of its authority and responsibilities relating to repairs and maintenance to a manager, managing agent, or management company. Such delegations may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent.
- (d) Filing all claims arising under insurance written in the name of the Association and obtain reliable and detailed estimates of the cost of repair or reconstruction of damage or destruction to property covered by such insurance.
- (e) Repairing or reconstructing any damaged or destroyed Common Area property to substantially the same condition in which it existed prior to the damage or destruction, unless members representing at least two-thirds (2/3) of the voting rights of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. Notwithstanding the foregoing, damage or destruction to any utility, including any sewage lift station, or other utility serving the Development shall, unless damage or destruction is attributable to negligence of an individual member, be repaired and/or reconstructed by the Association.

(f) Borrowing money and issuing evidences of indebtedness in furtherance of any or all of the purposes of the Association, and to secure the same by mortgage, pledge or other lien or property owned by the Association; provided, however, that any such action shall also be approved by affirmative vote of sixty percent (60%) of all of the members of the Association.

(g) Collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, opening bank accounts on behalf of the Association and designating the signatories required, and using the proceeds to administer the Association; provided, however, that any reserve fund may be deposited, in the Board of Directors' best business judgment, in depositories other than banks.

(h) Making and amending rules for the Development.

(i) Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifically the maintenance and repair expenses and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the members and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the members. All books and records shall be kept in accordance with generally accepted accounting practices.

(j) Creating such committees as it deems necessary, convenient or desirable and to appoint persons thereto for the purpose of implementing the administration of the Association and to delegate to such committees any functions or responsibilities which are not required by law to be performed by the Board of Directors.

(k) Asserting, defending or settling claims, lawsuits or other demands or disputes on behalf of all members in connection with the Common Areas. The Board of Directors shall provide at least a ten (10) day written notice to all members of actions proposed by the Board of Directors with regard thereto.

(l) Entering into easement agreements, license agreements and other agreements with utility companies (both private and public), and with the owners of neighboring properties.

Section 6. Vacancies. Vacancies in the Board of Directors which occur by any reason other than the removal of a Trustee by a vote of the members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a Trustee until a successor is elected at the next annual meeting of the members of the Association.

Section 7. Removal. At any regular or special meeting of the Association duly called with due notice of the removal action proposed to be taken, any one or more of the Directors may be removed with or without cause by the affirmative vote of more than fifty percent (50%) of the voting power of the members represented at the meeting and a successor may then and there be elected to fill any vacancy thus created. The quorum requirement for the purpose of filling such vacancy shall be the normal thirty-three and one-third percent (33 1/3 %) requirement set forth in Article VIII, Section 4. Any Trustee whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined from time to time by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Trustee personally, by mail, telephone or telegraph, at least ten (10) days prior to the date named for such meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Trustee given personally, by mail, telephone or telegraph, which

*Third Modification of Declaration of Covenants, Conditions, Restrictions
and Grant and Reservation Easements*

Exhibit 2.8

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notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of two (2) Directors.

Section 10. Waiver of Notice. Before or at any meeting of the Board of Directors, any Trustee may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee at any meeting of the Board shall be deemed a waiver of notice by such Trustee of the time and place thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, less than a quorum is present, the majority of those present may adjourn the meeting to a subsequent time upon twenty-four (24) hours' prior written notice, delivered to all Directors not present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Trustee in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Trustee for purposes of determining a quorum.

Section 12. Conduct of Meetings. The Chairman of the Board of Directors shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meeting. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all Directors are able through telephone connection to hear and to be heard.

Section 13. Open Meetings. Subject to the provision of Sections 14 and 15 of this Article, all meetings of the Board of Directors shall be open to all members of the Association, but members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a member of the Board of Directors. In such case, the President may limit the time any member may speak.

Section 14. Executive Session. The Board of Directors may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 15. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the members of the Board have been obtained.

Section 16. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for the funds of the Association furnish adequate fidelity bonds. The premiums on such bonds shall be expenses of administration.

ARTICLE X OFFICERS

Section 1. Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as the Board of Directors, in their judgment, may deem necessary. The President, Secretary and Treasurer shall be elected from among the members of the Board of Directors.

(a) **President.** The President shall be the chief executive officer of the Association. The President shall

have all of the general powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members of the Association, from time to time, as the President may deem appropriate to assist in the conduct of the affairs of the Association.

(b) Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be imposed upon the Vice President by the Board of Directors.

(c) Secretary. The Secretary shall: (i) keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; (ii) shall have charge of such books and papers as the Board of Directors may direct; and (iii) shall, in general, perform all duties incident to the office of Secretary.

(d) Treasurer. The Treasurer shall have responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, and in such depositories as may, from time to time, be designated by the Board of Directors.

Section 2. Election. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal. Upon affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor elected, at any regular meeting of the Board of Directors or at any special meeting of the Board called for such purpose. No such removal action may be taken, however, unless the matter shall have been included in the notice of such meeting. The officer who is proposed to be removed shall be given an opportunity to be heard at the meeting.

Section 4. Duties. The officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board of Directors.

Section 5. Agreements, Contracts, Deeds, Easements, Leases, Checks. All agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association shall be executed by any two (2) officers of the Association or by such other person or persons as may be designated by resolution of the Board.

ARTICLE XI INDEMNIFICATION OF OFFICERS AND Directors

Every Trustee and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, to the extent provided for in the Articles of Incorporation of the Corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Trustee or officer may be entitled. At least ten (10) days prior to payment of any indemnification which it has approved, the Board of Directors shall notify all members thereof. Further, the Board of Directors is authorized to carry officers' and Directors' liability insurance covering acts of the officers and Directors of the Association in such amounts as it shall deem appropriate.

ARTICLE XII AMENDMENTS

Section 1. Proposal. Amendments to these Regulations may be proposed by the Board of Directors of the Association acting upon the vote of the majority of the Directors or proposed by members holding at least one-third (1/3) of the voting rights of the Association, by instrument in writing signed by them.

Section 2. Meeting. Upon any such amendment being proposed, a meeting for consideration of the same shall be duly called in accordance with the provisions of these Regulations.

Section 3. Voting by Board of Directors. These Regulations may be amended by an affirmative vote of a majority of the Board of Directors, provided that such amendments do not materially alter or change the rights of owners, mortgagees or other interested parties.

Section 4. Voting by Members. These Regulations may be amended by the members at any regular annual meeting or a special meeting called for such purpose by an affirmative vote of members holding at least two-thirds (2/3) of all of the voting rights of the Association. A person causing or requesting an amendment to these Regulations shall be responsible for costs and expenses of the amendment except for amendments based upon a vote of a prescribed majority of members, the costs of which are expenses of administration.

Section 5. Effective Date. Any amendment to these Regulations shall become effective upon adoption.

Section 6. Binding. A copy of each amendment to the Regulations shall be furnished to every member of the Association after adoption; provided, however, that any amendment to these Regulations that is adopted in accordance with this Article shall be binding upon all persons who have an interest in the Development irrespective of whether such persons actually receive a copy of the amendment.

ARTICLE XIII
RIGHTS RESERVED TO THE DEVELOPER

Any or all of the rights and powers granted or reserved to the Developer herein, including the right and power to approve or disapprove any act, use or proposed action or any other matter or thing, may be assigned by it to any other entity or to the Association provided that any such assignee shall assume the obligations of the Developer hereunder. Any such assignment or transfer shall be made in accordance with the Declaration by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its acceptance of such powers and rights, and such assignee or transferee shall thereupon have the same rights and powers as herein given and reserved to the Developer.

ARTICLE XIV
SEVERABILITY

In the event that any of the terms, provisions or covenants of these Regulations are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions or covenants of the Regulations or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

IN WITNESS WHEREOF, the Developer has executed this document this ____ day of September, 2004.

WESTERN HOSPITALITY GROUP, LP
a Montana Limited Partnership

By MISSOULA HOSPITALITY, LLC
a Montana Limited Liability Company
Its General Partner

By  9/24/04
Robert E. Voelker, Its Member
DEVELOPER

5
JB

RETURN TO:

Western Hospitality Group, L.P.
c/o Gateway Hospitality Group
Attn: Robert Voelker
8921 Canyon Falls Blvd, Ste 140
Twinsburg, OH 44087

STM-81734

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03/29/2016 04:27:06 PM Miscellaneous
Tyler R. Gernant, Missoula County Clerk & Recorder



FOURTH MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND GRANT AND RESERVATIONS OF EASEMENTS

THIS FOURTH MODIFICATION is made and entered into as of the 26th day of March, 2016 by Western Hospitality Group, L.P., a Montana limited partnership ("Declarant").

RECITALS

A. Declarant is the developer of the Hilton Garden Inn Project ("HGI Project") located near the intersection of Reserve Street and Howard Raser Drive in the City of Missoula, Montana.

B. In connection with the development of the HGI Project, Declarant prepared and recorded a Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of Easements, dated and executed on August 12, 2004, and recorded on August 25, 2004 in Book No. 738, Page 1015, as Instrument No. 200424360 of Micro Records of Missoula County ("Original Declaration"), as amended by the Modification of Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of Easements dated August 30, 2006, and recorded on September 6, 2006 in Book 782, Page 710, as Instrument No. 200622670 of Micro Records of Missoula County ("First Modification"), the Second Modification of Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of Easements dated May 17, 2007, and recorded on August 1, 2007 in Book 802, Page 1146, as Instrument No. 200719744 of Micro Records of Missoula County ("Second Modification"), and the Third Modification of Declaration of Covenants, Conditions, Restrictions and Grant and Reservation of Easements dated June 3, 2009, and recorded on July 16, 2009, in Book 843, Page 1266, as Instrument No. 200917624 of Micro Records of Missoula County ("Third Modification") (as so amended, collectively, the "Declaration").

C. Declarant, as seller, and CFT NV Developments, LLC (“CFT”), as buyer, entered into that certain Purchase and Sale Agreement, dated June 26, 2015 (“Purchase Agreement”) for the purchase of real property consisting of Lot 2 of the Missoula Hilton Subdivision (the “New Lot 2” or the “Property”) as created by and shown on Plat 00395, recorded on July 6, 2009 in Book 33, page 94, of the Missoula County Clerk and Recorder’s Office, a copy of which is attached hereto and made a part hereof as Exhibit A. For purposes of clarification, prior to July 2009, the New Lot 2 was previously referred to as Lot 3 in the Original Declaration, legally described in Schedule II to the Declaration as Lot A, and depicted on Exhibit B of the Original Declaration as “Outparcel Lot 3”. Outparcel Lot 3 was part of a larger Tract 1A-2A. In the Third Modification, Declarant subdivided Tract 1A-2A into two (2) newly created lots, one of which is the New Lot 2. Declarant seeks: (1) to approve the site plan for the construction of a freestanding drive-thru Panda Express restaurant with building area of +/- 2,600 square feet and a CFT multitenant, mixed use building with building area of +/- 6,400 square feet on the New Lot 2; (2) to define the permitted building area(s) and permitted uses on the New Lot 2; and (3) to eliminate the parking restriction on the New Lot 2.

TERMS

NOW, THEREFORE, for and in consideration of the purchase and sale of the Property, Declarant, as the sole “Consenting Owner” (as that term is defined in the Original Declaration) hereby modifies the Declaration as follows:

1. Section 2.3.1.

The following sentence is hereby added after the second sentence of the first paragraph of Section 2.3.1:

“Consenting Owner hereby approves the site plan for the New Lot 2 (formerly Lot 3) attached hereto as Schedule III.”

2. Section 5.1.1.

The third sentence of Section 5.1.1, which restricts the New Lot 2 to one restaurant and refers to the preceding sentence which places a parking restriction thereon, is hereby deleted and replaced with the following:

“The New Lot 2 (formerly Lot 3) may contain two (2) buildings, that in the aggregate, do not exceed nine thousand (9,000) square feet. The freestanding building may be used as a drive-thru restaurant, including a Panda Express drive-thru restaurant. The multitenant building may also be used for restaurants, food and retail products and services generally found in retail shopping centers, including without limitation, service offices such as financial institutions, real estate or loan brokers, insurance companies, title companies, dental or medical offices, as well as any type of retail sale facility not otherwise

prohibited by the terms of Section 5.1.2 hereof. In addition, the parking restriction (which provided that any such use shall not increase the amount of parking spaces required to enable use of the buildings for their respective purposes) is hereby deleted, and shall not apply to the New Lot 2.”

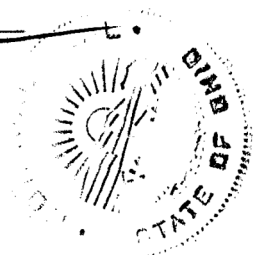
3. All other provisions of the Declaration remain as originally stated.

This Fourth Modification is executed as of the date first above written.

WESTERN HOSPITALITY GROUP, LP
a Montana limited partnership

By: Missoula Hospitality, LLC
Its: General Partner

By: [Signature]
Print Name: ROBERT F. VOELKER
Its: MANAGER



NOTARY ACKNOWLEDGMENT

State of Ohio
County of Summit

This instrument was acknowledged before me on 3-28-16 by

Robert Voelker
Print name of signer(s)

[Signature]
Notary Signature

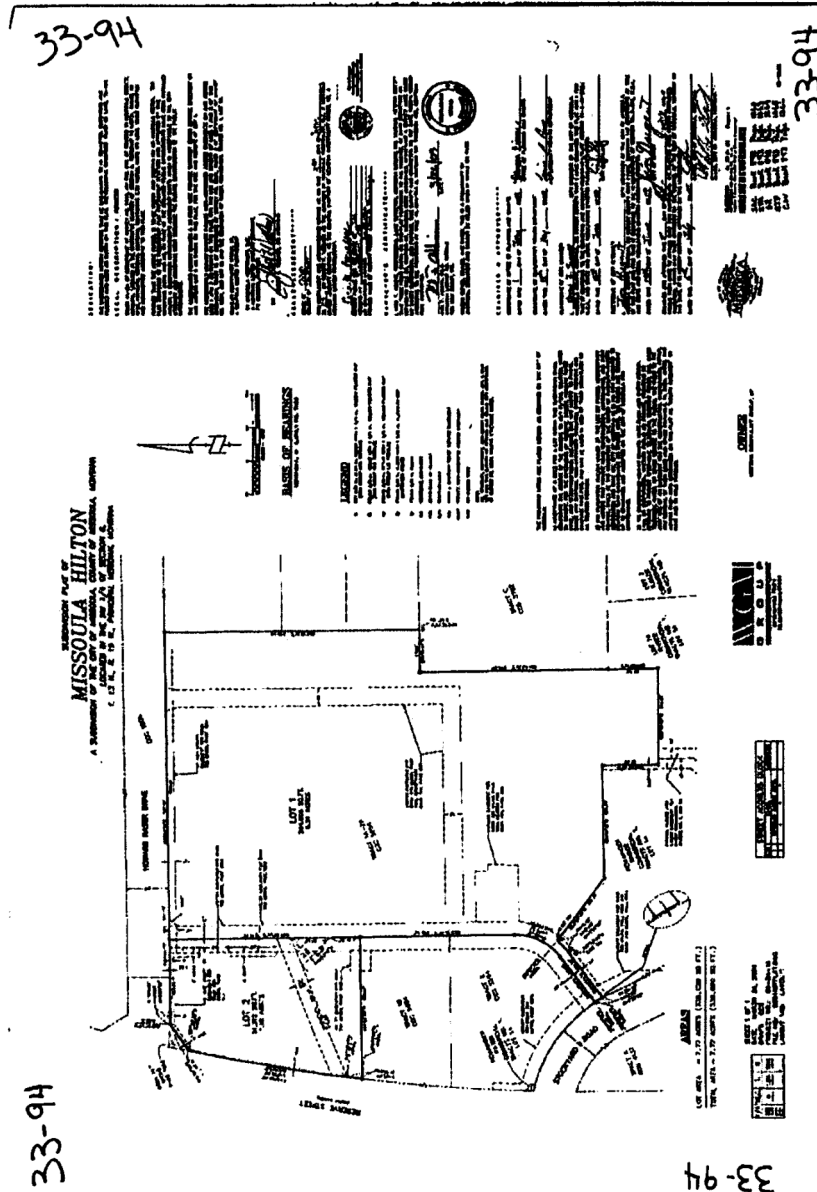
Affix seal/stamp as close to signature as possible.



Kathy L. Miller
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 06/04/2020

Exhibit "A"

Plat Map of the Missoula Hilton Subdivision
(Plat 003995, recorded 7/6/2009, Book 33, page 94, Missoula County Clerk & Recorder)



Schedule III
Site Plan For the New Lot 2

