



**DECLARATION OF PROTECTIVE COVENANTS  
AND RESTRICTIONS FOR THE VILLAGE BOULEVARD MINOR  
SUBDIVISION VILLAGE DOWNTOWN SUBDIVISION**

THIS DECLARATION is made this 19<sup>th</sup> day of May, 2004, by The Village Investment Group, Inc., hereinafter referred to as "Declarant;"

**WITNESSETH:**

WHEREAS, Declarant is the owner of real property situated in Gallatin County, Montana, more particularly described on Exhibit "A" attached hereto and incorporated herein;

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as "The Village Boulevard Minor Subdivision" and "The Village Downtown Subdivision;" and,

WHEREAS, Declarant desires to subject all of said real property, together with the lots contained therein, to the covenants, conditions, restrictions and reservations herein set forth and referred to as "Covenants;"

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Protective and Restrictive Covenants, which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the property. Such Covenants shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, lot or division.

Said Covenants shall be as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1. The term "Association" shall mean The Village Downtown Owners' Association, its successors and assigns. The Association may be incorporated as a Montana nonprofit corporation, with its members as the lot, townhome, or unit owners.



Section 2. The term "member" shall mean the owner of any lot, townhome, or condominium unit. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation and Bylaws, and the rules, regulations, and resolutions of the Owners' Association, if any.

Section 3. The term "owner," "lot owner," "townhome owner," or "unit owner," shall mean any person or entity owning a fee simple interest in a lot, townhome, or condominium unit, or a contract purchaser of such properties, whether one or more persons or entities, owning or purchasing a lot or condominium unit, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a lot or condominium unit for value, the term "owner" shall mean "Declarant" or its successors or assigns. The term "person" hereinafter shall include any person, persons or entities.

Section 4. The term "contract purchaser" shall mean a person buying a lot or condominium unit pursuant to a contract for deed, Montana Trust Indenture or mortgage.

Section 5. The terms "properties," "lots," "units," and "townhomes," shall mean all of the real property herein described and subsequently surveyed and platted into lots, townhome lots, or condominium units in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Gallatin County, Montana.

Section 6. The term "Directors" shall mean the Directors of The Village Downtown Owners' Association, and shall consist of at least three, but not more than seven, lot, townhome, or condominium owners who shall be elected at the annual meeting by a simple majority of the members of the Association. The Board of Directors shall be elected for a term set by a simple majority of the membership, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Until 60% of the lots, townhomes, and condominium units in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot, townhome, or unit owners or members of the Association. The initial number of Directors to be appointed by the Declarant shall be three.

Section 7. The term "Declarant" shall mean and refer to The Village Investment Group, Inc., and its successors and assigns.

Section 8. The term "Manager" shall mean the manager, the Board of Directors of the Owners' Association, a management corporation, or any other person or group of persons retained or appointed by the Board of Directors of the Owners' Association for the purpose



of conducting the day-to-day operations of The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 9. The term "open space" means those areas set aside for the use of the owners and the public, including trails, easements, boulevards, parks (both active and owners'), and parkways.

Section 10. The term "active park" means the larger park areas that are maintained by the Association, and which are dedicated to the public, and may be transferred to the City of Bozeman, or any other public agency or authority, for such purposes and subject to such conditions as may be agreed to by the Association at some time in the future. No such dedication or transfer shall be effective unless approved by a majority of the Directors.

Section 11. The term "owners' parks" means the boulevards, trails, and parkways owned and/or maintained in perpetuity by The Village Downtown Owners' Association.

Section 12. The term "The Village Downtown Common Area Management Plan" shall mean the management plan for designated park land and open space. The Management Plan shall provide for the permanent care, management, maintenance and development of the open space, recreational areas, trails, alleys, roads, common area lighting, and communally owned facilities, designated on the plat.

Section 13. The term "The Village Downtown Architectural Committee" shall mean the Committee appointed by the Board of Directors of The Village Downtown Owners' Association, whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites, and locations of improvements to be constructed within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 14. The term "improvements" shall include, but not be limited to, all buildings, outbuildings, stairs, decks, bridges, alleys, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, hedges, windbreaks, plantings, trees and shrubs, retaining walls, yard and lawn ornaments or artwork, tree houses, exterior lighting, solar panels, water lines, sewer lines, electrical, gas, telephone and internet transmission lines, cable television lines, television and radio transmission facilities, poles, signs, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

Section 15. The term "common lands and facilities" means those areas set aside for the use of the owners and the public, as shown on the recorded plats of the "Village Boulevard Minor Subdivision" and the "Village Downtown Subdivision," including but not limited to roads, alleys, emergency access, medians, trails, easements, open space, boulevards storm water retention/detention areas, watercourse setbacks, flood plains, parks (both active and owners'), and parkways.



Section 16. Other definitions may be found throughout these covenants and those definitions are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

**ARTICLE II**

**PROPERTY USE AND CITY REQUIRED COVENANTS**

Section 1. Every owner shall have a right to use and enjoy, in perpetuity, the common lands and facilities as shown on the plat for The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, subject to the following:

- a. The right of the Association to charge reasonable fees for the disproportionate use by owners or others of, or for use of specialized recreational or other facilities situated on, the owners' parks or common areas.
- b. The requirement that Owners and guests not harass wildlife in any way, and should avoid areas of wildlife concentration. Loud, offensive, or other behavior which harasses or frightens wildlife in parks, common areas, and open space is prohibited.

Section 2. Each townhome owner shall be responsible for the maintenance and repair of all private parking areas, private walkways, exterior lighting, trees, and landscaping on their townhome lot, and shall at all times keep the townhome lot, and the buildings, improvements, and appurtenances thereon in a safe and clean condition. Maintenance shall include, but not be limited to snow and ice removal as required by the City of Bozeman. It shall also be the responsibility of each townhome owner to maintain their own driveways and parking areas from the edge of the paved street or alley to their own garage. All private landscaping shall be maintained, watered, trimmed, mowed, controlled for weeds, and replaced as necessary so as not to detract from the general appearance of the subdivision and the neighboring properties in the opinion of the Architectural Committee.

The common lands and facilities are to be mowed and maintained by the Association. Boulevards, rights-of-way, storm drainage and detention/retention areas, and ditches may not be blocked or filled.

In the event that maintenance, repair, or weed control is caused or necessitated through the willful or negligent act of any owner, or their guests, invitees, agents or contractors, and such maintenance, repair, or weed control is completed by the Association after reasonable notice to the owner, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot or unit is subject. Maintenance



and repair caused by willful or negligent acts of owners shall include, but not be limited to, maintenance and repairs required as a result of utility installation or repairs, or other actions of contractors or agents of the owner, performed outside the boundary of the lot or unit.

Section 3. In addition to current city standards, all outdoor lighting, residential, commercial or otherwise, shall be free of glare, and shall be fully shielded or shall be indirect lighting. No direct lighting shall be emitted beyond the lot line of any parcel. No ranch lights or unshielded lights shall be permitted. No mercury vapor or high-pressure sodium lights are permitted.

For the townhomes with alley accesses, all alleyway garages shall provide a minimum of one wall mounted light fixture or recessed can fixture, with a minimum of 60 watts and maximum of 100 watts, in a soft white incandescent "non glare" or "down light" configuration. Such lights are to be controlled by photo electric cells. Owner shall keep photo cells within the fixture in good working order at all times, so that the fixture can be illuminated during all periods of darkness.

Any proposed lighting changes shall be approved in advance by the Architectural Committee.

For purposes of this paragraph, the following definitions shall apply:

- a. Fully shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric testing;
- b. Indirect light: Direct light that has been reflected or has scattered off of other surfaces;
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness; and
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Section 4. Each townhome owner shall control the weeds and all noxious plants on their townhome lot; provided, however, that the owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the other owners' vegetation. In the event an owner shall not control the weeds and noxious plants on their individual townhome lot, the Association, after ten days written notice to an owner to control the



same, may cause the weeds or noxious plants to be controlled, and may assess the townhome owner for the costs thereof.

Section 5. Each owner shall at all times conduct their use and activities in a manner that will preserve the integrity of waterways and wetlands within the parks and common areas, including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways or wetland areas, or any damage to the stream bed or banks of said waterways or wetland areas. The owner or occupant of any lot, townhome, or condominium unit shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas into waterways or wetland areas;
- b. Any polluting of waterways or wetland areas;
- c. The use of any fertilizers, herbicides, or poisons, other than those specifically approved by the Architectural Committee, that would runoff, drain or discharge into waterways or wetland areas;
- d. Any erosion or refuse encouraging activities that would affect waterways or wetland areas;
- e. Any diversion of any water or drainage from any waterway or wetland areas onto any subdivision lot, park lands, streets, or common areas.

Section 6. No noxious odors or offensive activity shall take place upon any portion of the Subdivision, lots, townhomes, or units, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

Section 7. Home movie theaters and sound systems, both interior and exterior, shall be constructed so as to minimize sound, noise, and base reverberation, to any adjacent owners and the neighborhood.

Section 8. No firearms or fireworks of any kind shall be discharged in the Subdivision.

Section 9. No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however, poison may not be used.

Section 10. No livestock, poultry, or other animals, except domestic dogs and cats, or small in-house pets and birds, are permitted on the properties. A maximum of three (3) household pets, including dogs, cats and other household pets, may be kept, provided they are confined to the lot, townhome, or unit of their owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets shall not be allowed to roam free, and shall be restrained or leashed at all times. Pets shall not be allowed to become



a nuisance or annoyance to neighboring property owners, nor allowed to bark continuously or uncontrolled at any time. Owners are responsible for cleaning up after their pets on any neighboring properties, and on all boulevards, parks, trails, and common areas.

All dogs, cats and other pets shall be strictly controlled by their owners to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. If any animals are caught or identified chasing or otherwise harassing wildlife or people, or have become a nuisance or annoyance to neighboring property owners, the Association or any Owner shall have the authority to have such animal or animals impounded in accordance with the City of Bozeman animal control regulations.

All animals shall be further subject to the provisions of The Village Downtown Management Plan, and subject such rules and regulations as may be adopted by the Association, which may reduce the allowable number of pets, restrict the type of pet, or require that such pets be confined indoors.

Section 11. No signs shall be erected on the common areas, parks, or open space, or on any privately owned lot or unit within the subdivision, except as follows:

- a. One address or family name sign shall be allowed to identify the owner of the property. Standardized owner identification signs shall be provided by the Association at the Owners' request and at the Owners' cost, and must be attached to the principal residence in a standard location designated by the Association. Any such signs shall comply with the City of Bozeman zoning and sign regulations. No private identification signs shall be permitted.
- b. No individual "For Sale" signs shall be allowed. A central kiosk or other common area shall be designated for temporarily listing properties for sale, and posting other messages. All such sale listings and messages shall be promptly removed when the townhome, condominium, or lot is sold, and all other messages shall be dated and removed after 14 days.
- c. During the time that the property is being developed and lots are being sold, the Declarant may erect a "Subdivision For Sale" sign in accordance with the City of Bozeman zoning and sign regulations.
- d. A sign may be placed at the entrance(s) to the subdivision to identify the subdivision, and directory signs approved by the Board of Directors may be placed within the common areas, parks, trails, or open spaces. Directory signs shall be combined with landscaping features, shall be made of natural appearing materials, and must comply with the provisions of the City of Bozeman zoning and sign regulations. Any proposed subdivision and



identification signs must obtain sign permit approval through the Bozeman Planning Department.

- e. A ground-mounted historic plaque providing an overview of the site's important historic past related to the Mill Creek Flour Mill shall be constructed at a prominent, pedestrian-oriented area on the site. The plaque shall include the mill etchings, as well as a historical narrative of the site. The plaque shall comply with the provisions of the City of Bozeman zoning and sign regulations.

Section 12. Individual mail boxes will not be allowed, and no newspaper delivery tubes will be allowed in the Subdivision. Community mail boxes will be clustered at strategic locations approved by the Postmaster to simplify mail delivery, and such boxes shall be maintained by the Association. No parking will be allowed in front of the mailbox clusters. Newspaper and other delivery services shall drop off at the front doors of the townhomes, and to the front lobby areas of the Condominiums.

Section 13. All garbage, trash, and rubbish shall be regularly removed from the property, and shall not be allowed to accumulate. All solid waste containers must be stored in designated areas or out of view except during reasonable periods prior to and after pick-up, and only on the day of pick-up.

Section 14. No pickup camper, camping trailer, snowmobile, boat, trailer, motor home, motorcycle, four-wheeler, ATV, or any type of vehicle or similar item used for recreational purposes shall be used for habitation, overnight, or guest use, and such vehicles may not be placed or left upon a lot, driveway, street, or alley, unless it is stored in the Owner's private garage, and is not visible from other properties, sidewalks, or streets. Parking of any vehicle is prohibited in and on the driveway/garage approaches.

Section 15. No temporary structures, trailers, campers, motor homes, tents, or similar structures shall be used as a residence on any lot.

Section 16. All recreational and play equipment, including but not limited to, swing sets, play houses, teepees, trampolines, basketball hoops, tennis or badminton nets, shall be limited to private back yard areas, shall be inconspicuous and screened from neighboring and street views, and shall be limited in use so as not to be offensive to neighboring properties or common areas.

Section 17. There are reserved, as shown on the plat and as may otherwise be reserved, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or re-laying transmission lines, pipes, and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication, and electrical power. Fencing, hedges and other items allowed by the Covenants may be placed along and in the easements as long as they do not interfere with or prevent the intended use of



such easements. All fencing, hedges, trees, or landscaping located in any easement areas may be subject to damage or removal if necessary, and must be replaced at the Owners' sole expense.

Section 18. City sewer and water lines, power, natural gas, cable television, and telephone primary service lines are provided to each townhome and condominium unit. All such utility lines shall be laid underground.

Section 19. All solar systems or panels, satellite systems, wireless DSL connections, or antennae of any kind, must meet the requirements of all applicable building codes and FCC regulations. Satellite dish size shall not exceed two feet in diameter. All satellite dishes shall be inconspicuously located, and screened from neighboring and street views. Any owners requesting installation of such systems must apply for review by the Architectural Review Committee prior to installation.

Section 20. The Association shall be responsible for road maintenance and snow removal on the streets, alleys, and common area sidewalks within The Village Downtown Subdivision that are not dedicated to the City of Bozeman. The Board of Directors of the Association may also choose to hire contract services for snow removal for the dedicated streets, sidewalks, and common areas to supplement the City of Bozeman snow removal services.

Per the recorded final plat, there is a 60-foot wide emergency access easement extending from the termination of Village Downtown Boulevard to Front Street. This will provide an additional emergency access for The Village Downtown development. Within the 60-foot wide easement, there is a 20-foot wide all-weather (gravel) road that shall be maintained year-round by The Village Downtown Owner's Association. There shall be no general public vehicular use of this 60-foot wide easement. There shall be a chain/gate across the 20-foot wide all-weather road prohibiting general vehicular access.

Maintenance and snow removal for the non-dedicated parking areas provided for the condominium units shall be the responsibility of the Association, but the cost of such maintenance and snow removal shall be assessed to the condominium units benefitted by the parking areas in accordance with the condominium declarations and bylaws.

Section 21. Any lot may be subject to the Declarations of a condominium or Covenants of a townhome property when legally formed and filed. The additional restrictions and requirements of any such condominium declaration or townhome covenants do not, in any way, relieve the lot or owner from compliance with all restrictive Covenants stated herein.

Section 22. City of Bozeman Standard Covenants.

- A. All county declared noxious weeds will be controlled in accordance with City of Bozeman regulations and the provisions of these Covenants.



- B. Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- C. All fences bordering agricultural lands shall be maintained by the landowners in accordance with state law.
- D. The property owners association shall be responsible for the maintenance of subdivision streets, common open space, centers, pathways, landscaping in street boulevards and/or parks.
- E. Any covenant which is required as a condition of the preliminary plat approval and required by the City Commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in the covenants, and the City Commission.

Section 23. All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the land lies are considered to be part of these Covenants and enforceable hereunder; and all of the owners of said lands shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either the Covenants or the zoning shall control.

**ARTICLE III**

**THE VILLAGE DOWNTOWN OWNERS' ASSOCIATION**

Section 1. An association is hereby established known as "The Village Downtown Owners' Association," (hereinafter referred to as the "Association"), for the purpose of enforcing these Covenants and operating the Association for the benefit of all members therein. The initial address of the Association shall be in care of the Village Investment Group, Inc., 101 East Main, Bozeman, Montana 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 2. Every owner or contract purchaser of a lot, "Village Home" townhome, or condominium unit, shall be a member of The Village Downtown Owners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot, townhome, or condominium unit. Each owner shall be responsible for advising the



Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address.

Members shall be entitled to one vote for each lot, townhome, or condominium unit owned. Multiple owners of a single lot, townhome, or condominium unit, shall have one such membership or voting interest between them. If more than one lot, townhome, or condominium unit is owned, the owner or owners thereof shall have one membership or voting interest for each separate lot, townhome, or condominium unit.

Section 3. For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a lot or unit sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 4. The annual meeting of the Association shall occur on the 1st Monday of June of each year, at a time and place determined and noticed by the Board of Directors.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association.

The members shall have the authority to set the number of Directors at the annual meeting, which number shall not be less than three nor more than seven.

Section 5. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 25% of the owners. Special meetings shall require 48 hours' notice, in writing.

Section 6. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article.

The presence of members, in person or by written proxy, representing 51% of the total votes of the membership shall constitute a quorum for any annual or special meeting.

In the event that any issue raised at an annual or special meeting of the Association members cannot be resolved by a simple majority vote of those present at the meeting, the



Board of Directors of the Association shall arrange for mediation services to be retained by the Association in order to resolve any such disputes.

Section 7. The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors.

All Director meetings shall require the presence of Directors entitled to cast a minimum of 51% of all votes of the Directors. The presence of Directors entitled to cast 51% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.

Section 8. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, park lands, open space, trails, boundary fences, drainage easements and common areas, community signs or identification; to enforce these Covenants; to set and collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall have the authority to hire additional professional officers, management personnel or companies, consultants, accounting services, or any other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to, a manager, secretary, treasurer, professional consultants, accountants, and maintenance personnel. The Directors shall also have the authority to make contractual arrangements with outside entities, including but no limited to attorneys, accountants, engineers, environmental consultants, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

Section 9. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 10. The duties of each of the offices shall be as follows:

A. President. The President shall preside over all meetings of the Association. The President shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and



shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

B. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

C. Secretary-Treasurer. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association, or shall report such accountings as may be prepared by an independent accountant hired by the Board of Directors.

Section 11. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

#### ARTICLE IV

#### ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Assessments.

Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- (1) Annual assessments or changes; and,
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the owner of such property at the time when the assessment are due.



Section 2. Purpose of Assessments.

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The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the owners, for the improvement, repair and maintenance of roads, alleys, easements, trails, trail markers, park lands, open space, mail boxes, community signs or identification, and community boulevard trees and landscaping within the subdivision, and for any other purposes, expressed or implied, in these Covenants. Community park land, wetlands, open space, and boulevard trees and landscaping shall be watered, maintained, and replaced by the Association when necessary.

Section 3. Amount and Approval of Assessments.

The maximum assessment per lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. The members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years as determined by the Board of Directors. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.



Section 5. Uniform Rate of Assessment.

Annual assessments shall be fixed by the Directors at a uniform rate for each lot, "Village Home" townhome, and condominium unit, except the Directors may fix a different uniform rate for improved and unimproved lots. The assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors. Special assessments shall be fixed at the same rate for each lot affected by the special assessments. Different rates of annual or special assessments may be set for different phases of The Village Downtown development.

Section 6. Date of Commencement of Annual Assessments: Due Dates.

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty days in advance of the due date of each annual assessment, and at least ninety days in advance of a special assessment. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclosure the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of their lot, townhome, or condominium unit.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot, townhome, or condominium unit, until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection of delinquent assessments.

Section 8. Sale or Transfer of a Lot, Townhome, or Condominium Unit.

The sale, transfer or encumbrance of any lot, townhome, or condominium unit, shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments



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thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a lot shall be responsible for checking with the Association for any outstanding assessments against said lot, townhome, or condominium unit, before the closing upon the purchase.

Section 9. Annual Assessment and Condominium Assessment.

Any owner assessed hereunder may be subject to an additional assessment of an applicable "Village Home" townhome or condominium association assessed and collected pursuant to the townhome covenants or condominium declarations, by laws and association documents. Payment of an applicable townhome or condominium assessments does not alleviate or off-set The Village Downtown Owners' Association assessment.

**ARTICLE V**

**THE VILLAGE DOWNTOWN COMMON AREA MANAGEMENT PLAN**

Section 1. The park lands, boulevards, trails, and open space in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision are intended to provide a general feeling of openness to buffer the residential areas of the Subdivision, to preserve and enhance existing watercourses, wetland areas, and related vegetation, to provide accessible recreational opportunities within an urban setting, and to provide trail connectivity through the Subdivision and into the adjacent neighborhoods.

The Village Downtown Common Area Management Plan is intended to provide a guideline for the protection, management, development, operation, and maintenance of the park lands, boulevards, trails, and open space within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 2. The park lands, wetland areas, boulevards, trails, and open space within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, as designated on the final plats, shall be transferred to The Village Downtown Owners' Association by the Declarant within five (5) years of final plat approval of The Village Downtown Subdivision, or at such time as 75% of the lots in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, whichever occurs the latest. The Village Downtown Owners' Association shall be responsible for payment of liability insurance and local taxes for these areas, shall maintain these areas in perpetuity, and shall have the exclusive right to provide for the protection, management, development, operation, and maintenance of recreation and other facilities in the parks and open space areas consistent with The Village Downtown Common Area Management Plan. The Association shall also have the right to enforce The Village Downtown Common Area Management Plan.



The Board of Directors of The Village Downtown Subdivision Owners' Association shall establish assessments for the taxes, insurance, and maintenance of all boulevards, trails, trail markers, roads, active parks under the control and authority of the Association, subdivision parks, parkways, and open space. The assessments levied by the Board for the maintenance, upkeep, repair and operation of open space and other common areas, like all other assessments, become a lien on each lot or unit within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision. The Board, may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 3. The Association shall have the right to construct such recreational facilities in any portion of the common areas that may be approved by a majority vote of the members voting at any regular or special meeting called in accordance with the provisions of these covenants.

Section 4. Trails may be located so as to provide opportunities for interior walking loops and wetlands and watercourse viewing and enjoyment. Ancillary facilities such as trail markers, benches, picnic tables, or overlook locations may be located and constructed along trails. Mowed areas are proposed adjacent to trails. All trails are to be Class II trails as defined by the City of Bozeman recreation park and trail regulations.

Section 5. The boulevards, storm water retention and detention areas, and trails located at the entrance to The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, along and in the center area of Village Boulevard and Village Crossing, and running along Trestle Trail, as well as the public park land and wetland areas shall be maintained by the Association. No motorcycles, ATV's, snowmobiles or similar means of motorized transportation are permitted in these areas. Motorized vehicles are allowed in these areas exclusively for snow removal and landscape mowing and maintenance.

Section 6. Landscaping and plantings shall feature native species, but may incorporate non-native and ornamental species of trees and shrubs that will minimize maintenance and water consumption, or that will contribute to wildlife depredation problems. Terrain modification may occur where needed to enhance opportunities for human activities, especially in conjunction with the trails, to improve vegetative screening, to enhance watercourse development, and to minimize maintenance. Temporary fencing around shrubs and trees may be utilized to prevent or minimize destruction by animals or people during the time necessary to ensure the protection and survival of any plantings.

Section 7. Noxious weeds shall be controlled on all common and open space areas by the Association. The preferred method is by introduction of desirable plant species that eliminate weeds. Interim measures permitted include herbicide applications, mowing and biological control. All herbicide applications shall be conducted according to applicable regulations.



Section 8. The watercourse and wetland riparian areas are intended to encourage the return of native plant and animal species, while recognizing that people are drawn to and like to be near water. All watercourse, wetland, and wildlife enhancement projects will be done in conjunction with public or private professional consultants, and shall be in compliance with recommendations from the Montana Department of Fish, Wildlife and Parks. The Association shall have the authority to establish reasonable rules for operation and maintenance of enhanced watercourse, wetland, and wildlife habitat areas consistent with the overall intent of The Village Downtown Open Space Management Plan, and the City of Bozeman zoning regulations.

Section 9. The killing or taking of any wildlife species by any means within the park lands, trails, open space, or other common areas is prohibited except for the catching and release of fish, and the control of specific animals known to be causing unacceptable damage to property or persons (i.e. beavers damming the watercourses or porcupines identified as girdling planted trees). In such cases, the Board of Directors shall contact appropriate professional consultants to trap and relocate such animals.

No feeding of wildlife other than birds shall be allowed in or on the park lands, trails, or common open space areas.

Section 10. Domestic pets shall not be allowed at any time in or on the open space areas or trails unless on a leash. Pet owners shall be required to clean up after any pets they take on the boulevards, parks, trails and open areas. At no time shall any domestic pet be permitted to chase or harass wildlife in or on the parks, trails, open space or other common areas.

Section 11. In general, no fences shall be permitted in the common areas. Temporary fences for the protection of plantings, as identified above, may be permitted. Fences required to restrict or direct human activity or safety shall be permitted as necessary, provided that no wire or metal mesh is used. Any required fencing shall meet the fencing regulations for the City of Bozeman.

Section 12. Signs shall be permitted to identify trail routes, direct human activity or provide interpretive information. Directory signs should be combined with landscaping features, shall be made of natural appearing materials, must comply with the provisions of the City of Bozeman zoning and sign regulations, and must be permitted prior to installation. All signs shall be approved by the Architectural Committee.

Section 13. No Owner, guest or invitee may use or occupy the park lands, wetlands, open space, trails, boulevards, roads, parking areas, or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee of The Village Downtown Subdivision. Violations shall be enforced as provided for in these Covenants.



#### Section 14. Common Lands and Facilities Maintenance Guarantee.

If the property owners association fails to install or maintain improvements according to approved plans, the City may, at its option, complete construction of improvements and/or maintain improvements in compliance with the Bozeman Municipal Code. The City's representative, contractors and engineers shall have the right to enter upon the property and perform such work, and the property owners association shall permit and secure any additional permission required to enable them to do so. The City shall bill the property owners association for any costs associated with the installation or maintenance of improvements.

In the event the organization or any successor organization established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots, shall at any time fail to maintain the common areas or facilities in reasonable order and condition in accordance with the approved plan, the City Commission may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice shall set forth the manner in which the common areas or facilities have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted be cured within thirty days thereafter and shall state the date and place of a hearing to be held within fourteen days of the notice. At the time of hearing, the City Commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the City may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the Commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public hearing and give notice of such hearing to the organization responsible for maintenance or the property owners of the development. At the hearing, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the City should not be continued for a succeeding year. If the City Commission determines that it is not necessary for the City to continue such maintenance, the City shall cease such maintenance at the time established by the City Commission. Otherwise the City shall continue maintenance for the next succeeding year subject to a similar hearing and determination at the end of each year thereafter.

- A. The cost of maintenance by the City shall be a lien against the common facilities of the development and the private properties within the development. The City Commission shall have the right to make assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such assessments. Any unpaid assessment shall be a lien against the



property responsible for the same, enforceable the same as a mortgage against such property. The City may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.

- B. Should the property owners association request that the City assume permanent responsibility for maintenance of facilities, all facilities shall be brought to City standards prior to the City assuming responsibility. The assumption of responsibility must be by action of the City Commission and all costs to bring facilities to City standards shall be the responsibility of the property owners association. The City may create special financing mechanisms so that those properties within the area affected by the property owners association continue to bear the costs of maintenance.

## ARTICLE VI

### ARCHITECTURAL REVIEW

#### Section 1. - Submission of Plans Before Construction.

No residence or other structure, and no improvement, fence, wall, garage, or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the Board of Directors, or the Architectural Committee if one has been established, as to compliance with these Covenants.

The Board of Directors or the established Architectural Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves, if they are not compatible with, or are inappropriate for the rest of the subdivision. The Board or the Architectural Committee may require reasonable fees to be paid with the filing of plans and specifications.

#### Section 2. - Approval or Failure to Disapprove.

The plans and designs submitted must be approved by a majority of the Board of Directors or Architectural Committee, and the owner notified in writing within thirty (30) days after submittal of detailed plans and specifications. If the Board of Directors or the Architectural Committee, fails to approve the plans by a majority vote, the owner shall be informed, in writing, as to the areas of non-compliance, and shall resubmit plans showing compliance for approval by the Board of Directors.



In the event a majority of the Board of Directors or the Architectural Committee fails to vote to approve or disapprove the plans submitted to it within thirty days after the detailed plans and specifications have been submitted, provided the plans include the information set forth above, approval shall not be required, and this Article will be deemed to have been fully complied with.

Any plans and specifications so approved, either expressly in writing or by the expiration of the thirty day period herein provided, shall then permit the owner to commence construction in accordance with said plans and specifications, provided that the structure and plans must substantially conform to the restrictions set forth in these Covenants. Any deviations from said plans which, in the judgment of the Board of Directors is a substantial deviation from the plans, shall be corrected to conform with the plans as submitted.

Section 3. - After Approval, Twelve Months to be Completed.

Any structure to be erected in accordance with the approval so given must be erected and completed within one year from the date of approval. If construction of a structure is not commenced within one year after approval, new approval must be obtained. If any structure is commenced and is not completed in accordance with the plans and specifications within one year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, including an injunction, or an action for damages.

Section 4. - Architectural Guidelines.

The Directors of the Association, or the Architectural Committee if one has been created, may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures may not be inconsistent with the provisions of these covenants. A copy of all rules, bylaws and procedures shall be available to the owners, and may be obtained from the Secretary of the Board of Directors.

Section 5. - Liability.

The primary goal of the Architectural Review process is to review the submitted applications, plans, specifications, materials, and samples in order to determine if the proposed improvements are compatible with the quality and materials of the existing construction in The Village Downtown Subdivision. The Board of Directors, and/or the Architectural Committee, does not assume responsibility for the following:

1. The structural adequacy, capacity, or safety features of the proposed structure or improvement;
2. Soil erosion, ground water levels, non-compatible or unstable soil conditions;

3. Compliance with any or all building codes, safety requirements, and governmental laws, regulation or ordinances.

Neither the Association, the Declarant, the Board of Directors, the Architectural Committee, nor the individual members thereof, may be held liable to any person for any damages for any Board of Directors' or Architectural Committee action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors or the Architectural Committee.

Section 6. Compliance with Approved Plans.

The Board of Directors or the Architectural Committee may inspect all work in progress and completed improvements, and give notice of any noncompliance as set forth below.

During construction or upon completion of any improvements, if the Board of Directors or the Architectural Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the owner and the Board of Directors of such noncompliance, and shall require the owner to remedy the same. If upon the expiration of seven (7) business days from the date of such notification, the owner has failed to commence to remedy such noncompliance, the Board of Directors shall determine the nature and extent of noncompliance, and the estimated cost of correction. The Board of Directors shall notify the owner in writing of the estimated costs of correction or removal. The owner shall then have five (5) business days to commence such remedy, and thirty (30) days (not 30 business days) to complete such remedy.

If the owner does not comply with the Board of Director's ruling within the five (5) business day period, the Board of Directors, at their option, may stop construction of the improvements, remove the noncomplying improvements, or remedy the noncompliance, and the owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the owner to the Association, the Board of Directors shall levy an assessment and file a lien against such owner, and the lot upon which the improvement was situated, for reimbursement, and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

**ARTICLE VII**

**TERM, ENFORCEMENT, APPLICABILITY AND CHANGE**

Section 1. The provisions of these Covenants shall be continuous and binding until terminated. For an initial term of ten (10) years from the date of these Covenants, or until



75% of the lots in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, whichever first occurs, these Covenants may be modified, altered or amended only with the consent of the Declarant, or its assigns.

After the initial ten year term for these Covenants, or after 75% of the lots in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, whichever first occurs, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, upon approval of two-thirds (2/3) of the votes of the Owners' Association at a meeting duly noticed and called for that purpose.

The dedications or easements for roads, alleys, utilities, trails, and common areas shall not be changed without the unanimous consent of all of the owners affected by the change. Any covenant required as a condition of subdivision approval shall not be altered or amended without the agreement of the governing body.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots. The President or Vice-President shall execute and record the amendment, change, or addition, with the Clerk and Recorder of Gallatin County, Montana.

Section 2. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may be to restrain violation of these Covenants, to recover damages, or both.

Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants, the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

Section 3. The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver, or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver of, or approval of a variance of, a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular owner or lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other owners or lots.



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Section 4. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 5. In any conveyance of the above described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

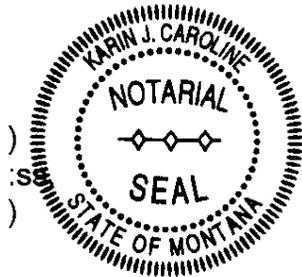
IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 19<sup>th</sup> day of May, 2004.

The Village Investment Group, Inc.

By: *Heana Ireland*

STATE OF MONTANA

County of Gallatin



On this 19<sup>th</sup> day of May, 2004, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Ivana Ireland, known to me to be the partner of The Village Investment Group, Inc., who executed the within instrument, and acknowledged to me that he executed the same on behalf of said company.

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

Notary Public for the State of Montana  
RESIDING AT BOZEMAN, MONTANA  
My Commission Expires  
March 18, 2008

Karin J. Caroline  
NOTARY PUBLIC for the State of Montana  
Printed Name Karin J. Caroline  
Residing at Bozeman, MT  
My Commission expires 3/18/08





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**EXHIBIT "A"**

The Village Downtown Subdivision – Legal Description:

LOT 1 OF THE AMENDED SUBDIVISION PLAT, BEING PORTIONS OF BLOCKS 28 THRU 30, BLOCKS 33 THRU 41, AND BLOCKS 46 THRU 48 OF NORTHERN PACIFIC ADDITION TO THE CITY OF BZOEMAN, BEING LOT 2 AS SHOWN IN BOOK C OF PLATS, PAGE 23-A4, THAT PARCEL DESCRIBED ON FILM 98, PAGE 1968, AND TRACT C OF CERTIFICATE OF SURVEY NO. 68, ALL LOCATED IN THE NE ¼ OF SECTION 7 AND THE NW ¼ OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 6 EAST, P.M.M., CITY OF BOZEMAN, GALLATIN COUNTY, MONTANA (PLAT C23-A10)



**AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS  
AND RESTRICTIONS FOR THE VILLAGE BOULEVARD  
MINOR SUBDIVISION AND  
VILLAGE DOWNTOWN SUBDIVISION**

THIS DECLARATION is made this 24<sup>th</sup> day of November, 2004, by The Village Investment Group, Inc., hereinafter referred to as "Declarant;"

**WITNESSETH:**

WHEREAS, Declarant is the owner of real property situated in Gallatin County, Montana, more particularly described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as "The Village Boulevard Minor Subdivision" and "The Village Downtown Subdivision"; and

WHEREAS, on June 17, 2004, Declarant recorded covenants for The Village Boulevard Minor Subdivision and the Village Downtown Subdivision as Document No. 2153802 in the office of Gallatin County Clerk and Recorder for the above reference property; and

WHEREAS, Declarant by and through this Declaration hereby restate and amend those covenants, restrictions, limitations and regulations for the for the benefit of the subdivisions described above.

NOW, THEREFORE, Declarant does hereby amend, restate, establish, dedicate, declare, publish and impose upon the property the following Protective and Restrictive Covenants, which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the property. Such Covenants shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, lot or division.

Said Covenants shall be as follows:



**ARTICLE I**

**DEFINITIONS**

Section 1. The term "Association" shall mean The Village Downtown Owners' Association, its successors and assigns. The Association may be incorporated as a Montana nonprofit corporation, with its members as the lot, townhome, or unit owners.

Section 2. The term "member" shall mean the owner of any lot, townhome, or condominium unit. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation and Bylaws, and the rules, regulations, and resolutions of the Owners' Association, if any.

Section 3. The term "owner," "lot owner," "townhome owner," or "unit owner," shall mean any person or entity owning a fee simple interest in a lot, townhome, or condominium unit, or a contract purchaser of such properties, whether one or more persons or entities, owning or purchasing a lot or condominium unit, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a lot or condominium unit for value, the term "owner" shall mean "Declarant" or its successors or assigns. The term "person" hereinafter shall include any person, persons or entities.

Section 4. The term "contract purchaser" shall mean a person buying a lot or condominium unit pursuant to a contract for deed, Montana Trust Indenture or mortgage.

Section 5. The terms "properties," "lots," "units," and "townhomes," shall mean all of the real property herein described and subsequently surveyed and platted into lots, townhome lots, or condominium units in The Village Downtown Subdivision, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Gallatin County, Montana.

Section 6. The term "Directors" shall mean the Directors of The Village Downtown Owners' Association, and shall consist of at least three, but not more than seven, lot, townhome, or condominium owners who shall be elected at the annual meeting by a simple majority of the members of the Association. The Board of Directors shall be elected for a term set by a simple majority of the membership, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Until 60% of the lots, townhomes, and condominium units in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot, townhome, or unit owners or members of the Association. The initial number of Directors to be appointed by the Declarant shall be three.



Section 7. The term "Declarant" shall mean and refer to The Village Investment Group, Inc., and its successors and assigns.

Section 8. The term "Manager" shall mean the manager, the Board of Directors of the Owners' Association, a management corporation, or any other person or group of persons retained or appointed by the Board of Directors of the Owners' Association for the purpose of conducting the day-to-day operations of The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 9. The term "open space" means those areas set aside for the use of the owners and the public, including trails, easements, boulevards, parks (both active and owners'), and parkways.

Section 10. The term "active park" means the larger park areas that are maintained by the Association, and which are dedicated to the public, and may be transferred to the City of Bozeman, or any other public agency or authority, for such purposes and subject to such conditions as may be agreed to by the Association at some time in the future. No such dedication or transfer shall be effective unless approved by a majority of the Directors.

Section 11. The term "owners' parks" means the boulevards, trails, and parkways owned and/or maintained in perpetuity by The Village Downtown Owners' Association.

Section 12. The term "The Village Downtown Common Area Management Plan" shall mean the management plan for designated park land and open space. The Management Plan shall provide for the permanent care, management, maintenance and development of the open space, recreational areas, trails, alleys, roads, common area lighting, and communally owned facilities, designated on the plat.

Section 13. The term "The Village Downtown Architectural Committee" shall mean the Committee appointed by the Board of Directors of The Village Downtown Owners' Association, whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites, and locations of improvements to be constructed within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 14. The term "improvements" shall include, but not be limited to, all buildings, outbuildings, stairs, decks, bridges, alleys, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, hedges, windbreaks, plantings, trees and shrubs, retaining walls, yard and lawn ornaments or artwork, tree houses, exterior lighting, solar panels, water lines, sewer lines, electrical, gas, telephone and internet transmission lines, cable television lines, television and radio transmission facilities, poles, signs, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.



Section 15. The term "common lands and facilities" means those areas set aside for the use of the owners and the public, as shown on the recorded plats for the "Village Boulevard Minor Subdivision" and "The Village Downtown Subdivision" including but not limited to roads, alleys, emergency access, medians, trails, easements, open space, boulevards storm water retention/detention areas, watercourse setbacks, flood plains, parks (both active and owners'), and parkways.

Section 16. The term "Zone Assessment" means the areas within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision as identified on Exhibit B, identified as Zones 1, 2 and 3, which shall pay specific assessments for services rendered to the specific Zone. The Zone Assessment shall be in addition to the annual assessment and special assessments. Zone Assessments shall be established and collected as set forth herein.

Section 17. Other definitions may be found throughout these covenants and those definitions are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

**ARTICLE II**

**PROPERTY USE AND CITY REQUIRED COVENANTS**

Section 1. Every owner shall have a right to use, in perpetuity, the common lands and facilities as shown on the plat for The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, subject to the following:

- a. The right of the Association to charge reasonable fees for the disproportionate use by owners or others of, or use of specialized recreational or other facilities situated on, or for use of specialized recreational or other facilities situated on, the owners' parks or common areas.
- b. The requirement that Owners and guests not harass wildlife in any way, and should avoid areas of wildlife concentration. Loud, offensive, or other behavior that harasses or frightens wildlife in parks, common areas, and open space is prohibited.

Section 2. In order to more effectively and efficiently ensure the maintenance of townhome lots as such maintenance applies to the exterior portions of the townhome lots, the Architectural Committee shall have the responsibility for the design and installation of any additional exterior landscaping portions of the townhome lots, not provided initially with the purchase of the townhome. Such design and installation of additional exterior landscaping shall be with the townhome lot owner's consent and at the sole cost and expense of the townhome lot owner.



All private landscaping shall be maintained, watered, trimmed, mowed, controlled for weeds, and replaced as necessary so as not to detract from the general appearance of the subdivision and the neighboring properties in the opinion of the Architectural Committee. In order to more effectively and efficiently ensure the maintenance of townhome lots as such maintenance applies to the exterior portions of the townhome lots, the Architectural Committee shall have the responsibility for the design and installation of the exterior portions of the townhome lots. The Association shall have the responsibility to contract for and supervise the exterior maintenance of the townhome lots designed as Zone 1. The exterior maintenance to be accomplished in Zone 1 shall include snow and ice removal for the sidewalks, porches, private parking areas, private walkways, driveways, and parking areas from the edge of the paved street or alley to the garage, as well as maintenance of exterior lighting, trees, shrubs and all landscaping care. Said snow removal shall include the snow and ice removal as required by the City of Bozeman. The Zone 1 maintenance specifically excludes the installation and maintenance of improvements and landscaping within each townhome private interior courtyard and the installed improvements on the townhome lot.

The specific services for Zones 2 and 3 shall be determined by the Association as needed.

The common lands and facilities are to be mowed and maintained by the Association. Boulevards, rights-of-way, storm drainage and detention/retention areas, and ditches maybe not be blocked or filled.

In the event that maintenance, repair, or weed control within Zones 2 and 3 is caused or necessitated through the willful or negligent act of any owner, or their guests, invitees, agents or contractors, and such maintenance, repair or weed control is completed by the Association after reasonable notice to the owner, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot or unit is subject. Maintenance and repair caused by willful or negligent acts of owners shall include, but not be limited to, maintenance and repairs required as a result of utility installation or repairs, or other actions of contractors or agents of the owner, performed outside the boundary of the lot or unit.

Section 3. In addition to current city standards, all outdoor lighting, residential, commercial or otherwise, shall be free of glare, and shall be fully shielded or shall be indirect lighting. No direct lighting shall be emitted beyond the lot line of any parcel. No ranch lights or unshielded lights shall be permitted. No mercury vapor or high-pressure sodium lights are permitted.

For the townhomes with alley accesses, all alleyway garages shall provide a minimum of one wall mounted light fixture or recessed can fixture, with a minimum of 60 watts and maximum of 100 watts, in a soft white incandescent "non glare" or "down light" configuration. Such lights are to be controlled by photoelectric cells. Owner shall keep



photo cells within the fixture in good working order at all times, so that the fixture can be illuminated during all periods of darkness.

Any proposed lighting changes shall be approved in advance by the Architectural Committee.

For purposes of this paragraph, the following definitions shall apply:

- a. Fully shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric testing;
- b. Indirect light: Direct light that has been reflected or has scattered off other surfaces;
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness; and
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Section 4. Each townhome owner shall ensure the control of weeds and all noxious plants on their townhome lot; provided, however, that the owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the other owners' vegetation. Weed control on the townhome lots, exclusive of the private interior yard, shall be accomplished by the Association and the costs of the same shall be collected through the Zone 1 assessment.

Section 5. Each owner shall at all times conduct their use and activities in a manner that will preserve the integrity of waterways and wetlands within the parks and common areas, including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways or wetland areas, or any damage to the stream bed or banks of said waterways or wetland areas. The owner or occupant of any lot, townhome, or condominium unit shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas into waterways or wetland areas;
- b. Any polluting of waterways or wetland areas;
- c. The use of any fertilizers, herbicides, or poisons, other than those specifically approved by the Architectural Committee, that would runoff, drain or discharge into waterways or wetlands areas;



- d. Any erosion or refuse encouraging activities that would affect waterways or wetland areas;
- e. Any diversion of any water or drainage from any waterway or wetland area onto any subdivision lot, parkland, street, or common area.

Section 6. No noxious odors or offensive activity shall take place upon any portion of the Subdivision, lots, townhomes, or units, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

Section 7. Home movie theaters and sound systems, both interior and exterior, shall be constructed so as to minimize sound, noise, and base reverberation, to any adjacent owners and the neighborhood.

Section 8. No firearms or fireworks of any kind shall be discharged in the Subdivision.

Section 9. No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however, poison may not be used.

Section 10. No livestock, poultry, or other animals, except domestic dogs and cats, or small in-house pets and birds, are permitted on the properties. A maximum of three (3) household pets, including dogs, cats and other household pets, may be kept, provided they are confined to the lot, townhome, or unit of their owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets shall not be allowed to roam free, and shall be restrained or leashed at all times. Pets shall not be allowed to become a nuisance or annoyance to neighboring property owners, nor allowed to bark continuously or uncontrolled at any time. Owners are responsible for cleaning up after their pets on any neighboring properties, and on all boulevards, parks, trails, and common areas.

All dogs, cats and other pets shall be strictly controlled by their owners to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. If any animals are caught or identified chasing or otherwise harassing wildlife or people, or have become a nuisance or annoyance to neighboring property owners, the Association or any Owner shall have the authority to have such animal or animals impounded in accordance with the City of Bozeman animal control regulations.

All animals shall be further subject to the provisions of The Village Downtown Management Plan, and subject such rules and regulations as may be adopted by the Association, which may reduce the allowable number of pets, restrict the type of pet, or require that such pets be confined indoors.



**Section 11.** No signs shall be erected on the common areas, parks, or open space, or on any privately owned lot or unit within the subdivision, except as follows:

- a. One address or family name sign shall be allowed to identify the owner of the property. Standardized owner identification signs shall be provided by the Association at the Owners' request and at the Owners' cost, and must be attached to the principal residence in a standard location designated by the Association. Any such signs shall comply with the City of Bozeman zoning and sign regulations. No private identification signs shall be permitted.
- b. No individual "For Sale" signs shall be allowed. A central kiosk or other common area shall be designated for temporarily listing properties for sale, and posting other messages. All such sale listings and messages shall be promptly removed when the townhome, condominium, or lot is sold, and all other messages shall be dated and removed after 14 days.
- c. During the time that the property is being developed and lots are being sold, the Declarant may erect a "Subdivision For Sale" sign in accordance with the City of Bozeman zoning and sign regulations.
- d. A sign may be placed at the entrance(s) to the subdivision to identify the subdivision, and directory signs approved by the Board of Directors may be placed within the common areas, parks, trails, or open spaces. Directory signs shall be combined with landscaping features, shall be made of natural appearing materials, and must comply with the provisions of the City of Bozeman zoning and sign regulations. Any proposed subdivision and identification signs must obtain sign permit approval through the Bozeman Planning Department.
- e. A ground-mounted historic plaque providing an overview of the site's important historic past related to the Mill Creek Flour Mill shall be constructed at a prominent, pedestrian-oriented area on the site. The plaque shall include the mill etchings, as well as a historical narrative of the site. The plaque shall comply with the provisions of the City of Bozeman zoning and sign regulations.

**Section 12.** Individual mailboxes and newspaper tubes will not be allowed in the Subdivision. Community mail boxes and newspaper deliver areas will be clustered at strategic locations approved by the Postmaster to simplify mail and newspaper delivery, and such boxes shall be maintained by the Association. No parking will be allowed in front of the mailbox clusters. Other delivery services shall be dropped off at the front doors of the townhomes, and to the front lobby areas of the Condominiums.

**Section 13.** All garbage, trash, and rubbish shall be regularly removed from the property, and shall not be allowed to accumulate. All solid waste containers must be



stored in designated areas or out of view except during reasonable periods prior to and after pick-up, and only on the day of pick-up.

Section 14. No pickup camper, camping trailer, snowmobile, boat, trailer, motor home, motorcycle, four-wheeler, ATV, or any type of vehicle or similar item used for recreational purposes shall be used for habitation, overnight, or guest use, and such vehicles may not be placed or left upon a lot, driveway, street, or alley, unless it is stored in the Owner's private garage, and is not visible from other properties, sidewalks, or streets. Parking of any vehicle is prohibited in and on the driveway/garage approaches.

Section 15. No temporary structures, trailers, campers, motor homes, tents, or similar structures shall be used as a residence on any lot.

Section 16. All recreational and play equipment, including but not limited to, swing sets, play houses, teepees, trampolines, basketball hoops, tennis or badminton nets, shall be limited to private back yard areas, shall be inconspicuous and screened from neighboring and street views, and shall be limited in use so as not to be offensive to neighboring properties or common areas.

Section 17. There are reserved, as shown on the plat and as may otherwise be reserved, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or re-laying transmission lines, pipes, and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication, and electrical power. Fencing, hedges and other items allowed by the Covenants may be placed along and in the easements as long as they do not interfere with or prevent the intended use of such easements. All fencing, hedges, trees, or landscaping located in any easement areas may be subject to damage or removal if necessary, and must be replaced at the Owners' sole expense.

Section 18. City sewer and water lines, power, natural gas, cable television, and telephone primary service lines are provided to each townhome and condominium unit. All such utility lines shall be laid underground.

Section 19. All solar systems or panels, satellite systems, wireless DSL connections, or antennae of any kind, must meet the requirements of all applicable building codes and FCC regulations. Satellite dish size shall not exceed two feet in diameter. All satellite dishes shall be inconspicuously located, and screened from neighboring and street views. Any owners requesting installation of such systems must apply for review by the Architectural Review Committee prior to installation.

Section 20. The Association shall be responsible for road maintenance and snow removal on the streets, alleys, and common area sidewalks within The Village Downtown Subdivision that are not dedicated to the City of Bozeman. The Board of Directors of the Association may also choose to hire contract services for snow removal

for the dedicated streets, sidewalks, and common areas to supplement the City of Bozeman snow removal services.

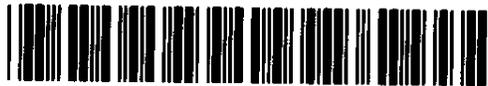
Per the recorded final plat, there is a 60-foot wide emergency access easement extending from the termination of Village Downtown Boulevard to Front Street. This will provide an additional emergency access for The Village Downtown development. Within the 60-foot wide easement, there is a 20-foot wide all-weather (gravel) road that shall be maintained year-round by The Village Downtown Owner's Association. There shall be no general public vehicular use of this 60-foot wide easement.

Maintenance and snow removal for the non-dedicated parking areas provided for the condominium units shall be the responsibility of the Association, but the cost of such maintenance and snow removal shall be assessed to the condominium units benefited by the parking areas in accordance with the condominium declarations and bylaws.

Section 21. Any lot may be subject to the Declarations of a condominium or Covenants of a townhome property when legally formed and filed. The additional restrictions and requirements of any such condominium declaration or townhome covenants do not, in any way, relieve the lot or owner from compliance with all restrictive Covenants stated herein.

Section 22. City of Bozeman Standard Covenants.

- a. All county declared noxious weeds will be controlled in accordance with City of Bozeman regulations and the provisions of these Covenants.
- b. Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- c. All fences bordering agricultural lands shall be maintained by the landowners in accordance with state law.
- d. The property owners association shall be responsible for the maintenance of subdivision streets, common open space, centers, pathways, landscaping in street boulevards and/or parks.
- e. Any covenant which is required as a condition of the preliminary plat approval and required by the City Commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in the covenants, and the City Commission.



Section 23. All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the land lies are considered to be part of these Covenants and enforceable hereunder; and all of the owners of said lands shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either the Covenants or the zoning shall control.

**ARTICLE III**

**THE VILLAGE DOWNTOWN OWNERS' ASSOCIATION**

Section 1. An association is hereby established known as "The Village Downtown Owners' Association, " (hereinafter and afore referred to as the "Association"), for the purpose of enforcing these Covenants and operating the Association for the benefit of all members therein. The initial address of the Association shall be in care of the Village Investment Group, Inc., 101 East Main, Bozeman, Montana 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 2. Every owner or contract purchaser of a lot, "Village Home" townhome, or condominium unit, shall be a member of The Village Downtown Owners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot, townhome, or condominium unit. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address.

Members shall be entitled to one vote for each lot, townhome, or condominium unit owned. Multiple owners of a single lot, townhome, or condominium unit, shall have one such membership or voting interest between them. If more than one lot, townhome, or condominium unit is owned, the owner or owners thereof shall have one membership or voting interest for each separate lot, townhome, or condominium unit.

Section 3. For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a lot or unit sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 4. The annual meeting of the Association shall occur on the 1st Monday of June of each year, at a time and place determined and noticed by the Board of Directors.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association.

The members shall have the authority to set the number of Directors at the annual meeting, which number shall not be less than three nor more than seven.

Section 5. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 25% of the owners. Special meetings shall require 48 hours' notice, in writing.

Section 6. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article.

The presence of members, in person or by written proxy, representing 51% of the total votes of the membership shall constitute a quorum for any annual or special meeting.

In the event that any issue raised at an annual or special meeting of the Association members cannot be resolved by a simple majority vote of those present at the meeting, the Board of Directors of the Association shall arrange for mediation services to be retained by the Association in order to resolve any such dispute.

Section 7. The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors.

All Director meetings shall require the presence of Directors entitled to cast a minimum of 51% of all votes of the Directors. The presence of Directors entitled to cast 51% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.

Section 8. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, park lands, open space, trails, boundary fences, drainage easements and common areas, community signs or identification; to enforce these Covenants; to set and collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special



improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall have the authority to hire additional professional officers, management personnel or companies, consultants, accounting services, or any other personnel that they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to, a manager, secretary, treasurer, professional consultants, accountants, and maintenance personnel. The Directors shall also have the authority to make contractual arrangements with outside entities, including but no limited to attorneys, accountants, engineers, environmental consultants, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

Section 9. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 10. The duties of each of the offices shall be as follows:

a. President. The President shall preside over all meetings of the Association. The President shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

b. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

c. Secretary-Treasurer. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association, or shall report such accountings as may be prepared by an independent accountant hired by the Board of Directors.

Section 11. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

**ARTICLE IV**

**ANNUAL AND SPECIAL ASSESSMENTS**

Section 1. Assessments.

Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- a. Annual assessments or changes; and,
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- c. Zone Assessments for specific services rendered within an identified zone, which shall be assessed against the lots within the zone as, identified on Exhibit B.

The annual, special assessments, and zone assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the owner of such property at the time when the assessment are due.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the owners, for the improvement, repair and maintenance of roads, alleys, easements, trails, trail markers, park lands, open space, mail boxes, community signs or identification, and community boulevard trees and landscaping within the subdivision, and for any other purposes, expressed or implied, in these Covenants. Community park land, wetlands, open space, and boulevard trees and landscaping shall be watered, maintained, and replaced by the Association when necessary. Zone Assessments shall be established for each zone for specific services rendered within an identified zone.

Section 3. Amount and Approval of Assessments.

The maximum assessment per lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying



out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. The members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years as determined by the Board of Directors. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

Section 5. Zone Assessments

In addition to annual assessment and special assessment authorized above, the Association may levy zone assessments for the purposes of defraying the costs of services identified for and provided to the lots within an identified zone. Zone assessments shall be in addition to but not duplicative of the annual assessments and special assessment.

Section 6. Uniform Rate of Assessment.

Annual assessments shall be fixed by the Directors at a uniform rate for each lot, "Village Home" townhome, and condominium unit, except the Directors may fix a different uniform rate for improved and unimproved lots. The assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors. Special assessments shall be fixed at the same rate for each lot affected by the special assessments. Zone Assessments shall be fixed by the Directors at a uniform rate for each lot within an identified zone, except the Directors may fix a different uniform rate for improved and unimproved lots. Different rates of annual or special assessments may be set for different phases of The Village Downtown development.

Section 7. Date of Commencement of Annual Assessments: Due Dates.



Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty days in advance of the due date of each annual assessment, and at least ninety days in advance of a special assessment. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclosure the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of their lot, townhome, or condominium unit.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot, townhome, or condominium unit, until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection of delinquent assessments.

Section 9. Sale or Transfer of a Lot, Townhome, or Condominium Unit.

The sale, transfer or encumbrance of any lot, townhome, or condominium unit, shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a lot shall be responsible for checking with the Association for any outstanding assessments against said lot, townhome, or condominium unit, before the closing upon the purchase.

Section 10. Additional Townhome and Condominium Assessment.

Any owner assessed hereunder may be subject to an additional assessment of an applicable "Village Home" townhome or condominium association assessed and collected pursuant to the townhome covenants or condominium declarations, by laws and association documents. Payment of an applicable townhome or condominium

assessments does not alleviate or off-set The Village Downtown Owners' Association assessment.

**ARTICLE V**

**THE VILLAGE DOWNTOWN COMMON AREA MANAGEMENT PLAN**

Section 1. The park lands, boulevards, trails, and open space in The Village Downtown Subdivision are intended to provide a general feeling of openness to buffer the residential areas of the Subdivision, to preserve and enhance existing watercourses, wetland areas, and related vegetation, to provide accessible recreational opportunities within an urban setting, and to provide trail connectivity through the Subdivision and into the adjacent neighborhoods.

The Village Downtown Common Area Management Plan is intended to provide a guideline for the protection, management, development, operation, and maintenance of the park lands, boulevards, trails, and open space within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision.

Section 2. The park lands, wetland areas, boulevards, trails, and open space within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, as designated on the final plats, shall be transferred to The Village Downtown Owners' Association by the Declarant within five (5) years of the final plat approval of The Village Downtown Subdivision, or at such time as 75% of the lots in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, whichever occurs the latest. The Village Downtown Owners' Association shall be responsible for payment of liability insurance and local taxes for these areas, shall maintain these areas in perpetuity, and shall have the exclusive right to provide for the protection, management, development, operation and maintenance of recreation and other facilities in the parks and open space areas consistent with The Village Downtown Common Area Management Plan. The Association shall also have the right to enforce The Village Downtown Common Area Management Plan.

The Board of Directors of The Village Downtown Subdivision Owners' Association shall establish assessments for the taxes, insurance, and maintenance of all boulevards, trails, trail markers, roads, active parks under the control and authority of the Association, subdivision parks, parkways, and open space. The assessments levied by the Board for the maintenance, upkeep, repair and operation of open space and other common areas, like all other assessments, become a lien on each lot or unit within The Village Boulevard Minor Subdivision and The Village Downtown Subdivision. The Board, may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 3. The Association shall have the right to construct such recreational facilities in any portion of the common areas that may be approved by a majority vote of the



members voting at any regular or special meeting called in accordance with the provisions of these covenants.

Section 4. Trails may be located so as to provide opportunities for interior walking loops and wetlands and watercourse viewing and enjoyment. Ancillary facilities such as trail markers, benches, picnic tables, or overlook locations may be located and constructed along trails. Mowed areas are proposed adjacent to trails. All trails are to be Class II trails as defined by the City of Bozeman recreation park and trail regulations.

Section 5. The boulevards, storm water retention and detention areas, and trails located at the entrance to The Village Boulevard Minor Subdivision and The Village Downtown Subdivision, along and in the center area of Village Boulevard and Village Crossing, and running along Trestle Trail, as well as the public park land and wetland areas shall be maintained by the Association. No motorcycles, ATV's, snowmobiles or similar means of motorized transportation are permitted in these areas. Motorized vehicles are allowed in these areas exclusively for snow removal and landscape mowing and maintenance.

Section 6. Landscaping and plantings shall feature native species, but may incorporate non-native and ornamental species of trees and shrubs that will minimize maintenance and water consumption, or that will contribute to wildlife depredation problems. Terrain modification may occur where needed to enhance opportunities for human activities, especially in conjunction with the trails, to improve vegetative screening, to enhance watercourse development, and to minimize maintenance. Temporary fencing around shrubs and trees may be utilized to prevent or minimize destruction by animals or people during the time necessary to ensure the protection and survival of any plantings.

Section 7. Noxious weeds shall be controlled on all common and open space areas by the Association. The preferred method is by introduction of desirable plant species that eliminate weeds. Interim measures permitted include herbicide applications, mowing and biological control. All herbicide applications shall be conducted according to applicable regulations.

Section 8. The watercourse and wetland riparian areas are intended to encourage the return of native plant and animal species, while recognizing that people are drawn to and like to be near water. All watercourse, wetland, and wildlife enhancement projects will be done in conjunction with public or private professional consultants, and shall be in compliance with recommendations from the Montana Department of Fish, Wildlife and Parks. The Association shall have the authority to establish reasonable rules for operation and maintenance of enhanced watercourse, wetland, and wildlife habitat areas consistent with the overall intent of The Village Downtown Open Space Management Plan, and the City of Bozeman zoning regulations.

Section 9. The killing or taking of any wildlife species by any means within the park lands, trails, open space, or other common areas is prohibited except for the catching



and release of fish, and the control of specific animals known to be causing unacceptable damage to property or persons (i.e. beavers damming the watercourses or porcupines identified as girdling planted trees). In such cases, the Board of Directors shall contact appropriate professional consultants to trap and relocate such animals.

No feeding of wildlife other than birds shall be allowed in or on the park lands, trails, or common open space areas.

Section 10. Domestic pets shall not be allowed at any time in or on the open space areas or trails unless on a leash. Pet owners shall be required to clean up after any pets they take on the boulevards, parks, trails and open areas. At no time shall any domestic pet be permitted to chase or harass wildlife in or on the parks, trails, open space or other common areas.

Section 11. In general, no fences shall be permitted in the common areas. Temporary fences for the protection of plantings, as identified above, may be permitted. Fences required to restrict or direct human activity or safety shall be permitted as necessary, provided that no wire or metal mesh is used. Any required fencing shall meet the fencing regulations for the City of Bozeman.

Section 12. Signs shall be permitted to identify trail routes, direct human activity or provide interpretive information. Directory signs should be combined with landscaping features, shall be made of natural appearing materials, must comply with the provisions of the City of Bozeman zoning and sign regulations, and must be permitted prior to installation. All signs shall be approved by the Architectural Committee.

Section 13. No Owner, guest or invitee may use or occupy the park lands, wetlands, open space, trails, boulevards, roads, parking areas, or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee of The Village Downtown Subdivision. Violations shall be enforced as provided for in these Covenants.

Section 14. Common Lands and Facilities Maintenance Guarantee.

If the property owners association fails to install or maintain improvements according to approved plans, the City may, at its option, complete construction of improvements and/or maintain improvements in compliance with the Bozeman Municipal Code. The City's representative, contractors and engineers shall have the right to enter upon the property and perform such work, and the property owners association shall permit and secure any additional permission required to enable them to do so. The City shall bill the property owners association for any costs associated with the installation or maintenance of improvements.

In the event the organization or any successor organization established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots, shall at any time fail to maintain the common areas or facilities in



reasonable order and condition in accordance with the approved plan, the City Commission may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice shall set forth the manner in which the common areas or facilities have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted be cured within thirty days thereafter and shall state the date and place of a hearing to be held within fourteen days of the notice. At the time of hearing, the City Commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the City may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the Commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public hearing and give notice of such hearing to the organization responsible for maintenance or the property owners of the development. At the hearing, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the City should not be continued for a succeeding year. If the City Commission determines that it is not necessary for the City to continue such maintenance, the City shall cease such maintenance at the time established by the City Commission. Otherwise, the City shall continue maintenance for the next succeeding year subject to a similar hearing and determination at the end of each year thereafter.

- a. The cost of maintenance by the City shall be a lien against the common facilities of the development and the private properties within the development. The City Commission shall have the right to make assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such assessments. Any unpaid assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The City may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.
- b. Should the property owners association request that the City assume permanent responsibility for maintenance of facilities, all facilities shall be brought to City standards prior to the City assuming responsibility. The assumption of responsibility must be by action of the City Commission and all costs to bring facilities to City standards shall be the responsibility of the property owners association. The City may create special financing mechanisms so that those properties within the area affected by the property owners association continue to bear the costs of maintenance.



**ARTICLE VI**

**ARCHITECTURAL REVIEW**

**Section 1.** - Submission of Plans Before Construction.

No residence or other structure, and no improvement, fence, wall, exterior landscaping, garage, or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the Board of Directors, or the Architectural Committee if one has been established, as to compliance with these Covenants.

The Board of Directors or the established Architectural Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves, if they are not compatible with, or are inappropriate for the rest of the subdivision. The Board or the Architectural Committee may require reasonable fees to be paid with the filing of plans and specifications.

**Section 2.** - Approval or Failure to Disapprove.

The plans and designs submitted must be approved by a majority of the Board of Directors or Architectural Committee, and the owner notified in writing within thirty (30) days after submittal of detailed plans and specifications. If the Board of Directors or the Architectural Committee fails to approve the plans by a majority vote, the owner shall be informed, in writing, as to the areas of non-compliance, and shall resubmit plans showing compliance for approval by the Board of Directors.

In the event a majority of the Board of Directors or the Architectural Committee fails to vote to approve or disapprove the plans submitted to it within thirty days after the detailed plans and specifications have been submitted, provided the plans include the information set forth above, approval shall not be required, and this Article will be deemed to have been fully complied with.

Any plans and specifications so approved, either expressly in writing or by the expiration of the thirty day period herein provided, shall then permit the owner to commence construction in accordance with said plans and specifications, provided that the structure and plans must substantially conform to the restrictions set forth in these Covenants. Any deviations from said plans, which, in the judgment of the Board of Directors are a substantial deviation from the plans, shall be corrected to conform with the plans as submitted.



Section 3. - After Approval, Twelve Months to be Completed.

Any structure to be erected in accordance with the approval so given must be erected and completed within one year from the date of approval. If construction of a structure is not commenced within one year after approval, new approval must be obtained. If any structure is commenced and is not completed in accordance with the plans and specifications within one year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, including an injunction, or an action for damages.

Section 4. - Architectural Guidelines.

The Directors of the Association, or the Architectural Committee if one has been created, may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures may not be inconsistent with the provisions of these covenants. A copy of all rules, bylaws and procedures shall be available to the owners, and may be obtained from the Secretary of the Board of Directors.

Section 5. - Liability.

The primary goal of the Architectural Review process is to review the submitted applications, plans, specifications, materials, and samples in order to determine if the proposed improvements are compatible with the quality and materials of the existing construction in The Village Downtown Subdivision. The Board of Directors, and/or the Architectural Committee, does not assume responsibility for the following:

- a. The structural adequacy, capacity, or safety features of the proposed structure or improvement;
- b. Soil erosion, ground water levels, non-compatible or unstable soil conditions;
- c. Compliance with any or all building codes, safety requirements, and governmental laws, regulation or ordinances.

Neither the Association, the Declarant, the Board of Directors, the Architectural Committee, nor the individual members thereof, may be held liable to any person for any damages for any Board of Directors' or Architectural Committee action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors or the Architectural Committee.



**Section 6.** Compliance with Approved Plans.

The Board of Directors or the Architectural Committee may inspect all work in progress and completed improvements, and give notice of any noncompliance as set forth below.

During construction or upon completion of any improvements, if the Board of Directors or the Architectural Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the owner and the Board of Directors of such noncompliance, and shall require the owner to remedy the same. If upon the expiration of seven (7) business days from the date of such notification, the owner has failed to commence to remedy such noncompliance, the Board of Directors shall determine the nature and extent of noncompliance, and the estimated cost of correction. The Board of Directors shall notify the owner in writing of the estimated costs of correction or removal. The owner shall then have five (5) business days to commence such remedy, and thirty (30) days (not 30 business days) to complete such remedy.

If the owner does not comply with the Board of Director's ruling within the five (5) business day period, the Board of Directors, at their option, may stop construction of the improvements, remove the noncomplying improvements, or remedy the noncompliance, and the owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the owner to the Association, the Board of Directors shall levy an assessment and file a lien against such owner, and the lot upon which the improvement was situated, for reimbursement, and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

**ARTICLE VII**

**TERM, ENFORCEMENT, APPLICABILITY AND CHANGE**

Section 1. The provisions of these Covenants shall be continuous and binding until terminated. For an initial term of ten (10) years from the date of these Covenants, or until 75% of the lots in The Village Boulevard Minor Subdivision and The Village Downtown Subdivision have been sold, whichever first occurs, these Covenants may be modified, altered or amended only with the consent of the Declarant, or its assigns.

After the initial ten year term for these Covenants, or after 75% of the lots in The Village Downtown Subdivision have been sold, whichever first occurs, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, upon approval of two-thirds (2/3) of the votes of the Owners' Association at a meeting duly noticed and called for that purpose.

The dedications or easements for roads, alleys, utilities, trails, and common areas shall not be changed without the unanimous consent of all of the owners affected by the



change. Any covenant required as a condition of subdivision approval shall not be altered or amended without the agreement of the governing body.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots. The President or Vice-President shall execute and record the amendment, change, or addition, with the Clerk and Recorder of Gallatin County, Montana.

Section 2. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may be to restrain violation of these Covenants, to recover damages, or both.

Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants, the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

Section 3. The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver, or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver of, or approval of a variance of, a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular owner or lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other owners or lots.

Section 4. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 5. In any conveyance of the above described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 24<sup>th</sup> day of November, 2004.

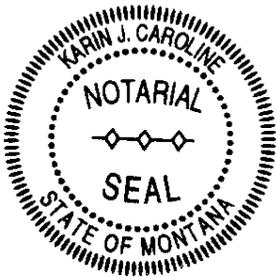
The Village Investment Group, Inc.

By: [Signature]

STATE OF MONTANA )  
 )  
 ) :ss.  
 )  
County of Gallatin )

On this 24<sup>th</sup> day of November, 2004, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Michael W. Delaney, known to me to be the president of The Village Investment Group, Inc., who executed the within instrument, and acknowledged to me that he executed the same on behalf of said company.

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



Karin J. Caroline  
NOTARY PUBLIC for the State of Montana  
Printed Name Karin J. Caroline  
Residing at Bozeman, MT  
My Commission expires 3/18/2008



**EXHIBIT "A"**

The Village Downtown Subdivision - Legal Description:

Lot 1 of the Amended Subdivision Plat, being portions of Blocks 28 thru 30, Blocks 33 thru 41, and Blocks 46 thru 48 of Northern Pacific Addition to the City of Bozeman, being Lot 2 as shown in Book C of Plats, Page 23-A-4, that parcel being described on Film 98, Page 1968, and Tract C of Certificate of Survey No. 68, all located in the NE  $\frac{1}{4}$  of Section 7 and the NW  $\frac{1}{4}$  of Section 8, Township 2 South, Range 6 East, P.M.M., City of Bozeman, Gallatin County, Montana (Plat C23-A10)



# ZONE MAP

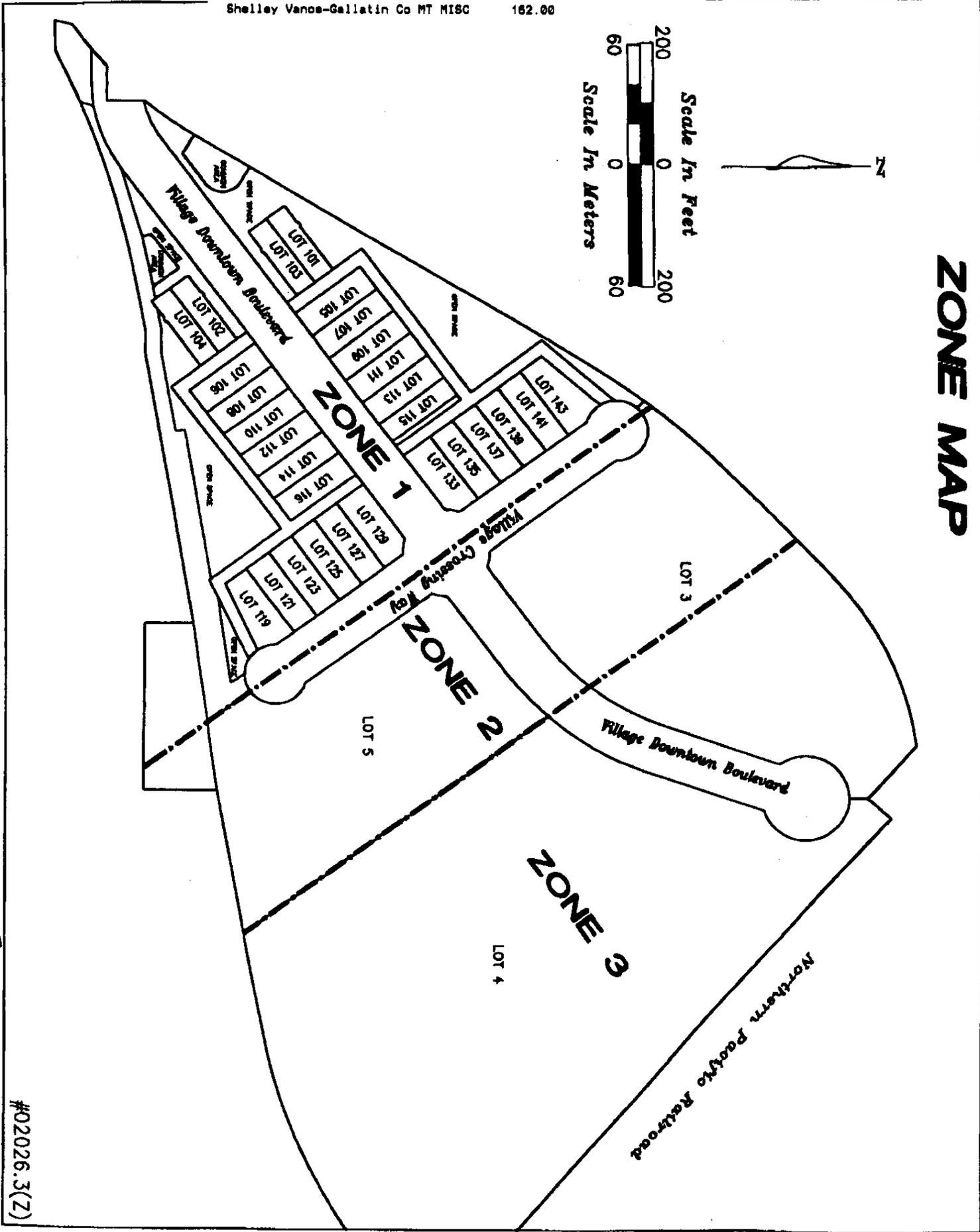
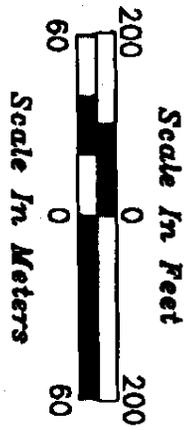


EXHIBIT B

#02026.3(Z)

**FIRST AMENDMENT TO**  
**AMENDED AND RESTATED DECLARATION**  
**OF PROTECTIVE COVENANTS**  
**AND RESTRICTIONS FOR THE VILLAGE BOULEVARD MINOR SUBDIVISION AND**  
**VILLAGE DOWNTOWN SUBDIVISION**

WHEREAS, on June 17, 2004, the Declaration of Protective Covenants and Restrictions for the Village Boulevard Minor Subdivision Village Downtown Subdivision were recorded in the office of Gallatin County Clerk and Recorder as Document No. 2153802; and

WHEREAS, on November 24, 2004, the Amended and Restated Declaration of Protective Covenants and Restrictions for the Village Boulevard Minor Subdivision and Village Downtown Subdivision were recorded in the office of Gallatin County Clerk and Recorder as Document 2171082; and

WHEREAS, the Owners and of the real property described as Lots 1, 2, 3, 4, and 5 of the Village Boulevard Minor Subdivision No. 344, located in the NE1/4 of Section 7 and NW 1/4 of Section 8, Township 2 South, Range 6 East, P.M.M., City of Bozeman, Gallatin County, according to the official plat thereof and Declarant of said Declarations desire to ensure the property is subject to the Amended and Restated Declaration of Protective Covenants and Restrictions for the Village Boulevard Minor Subdivision and Village Downtown Subdivision were recorded in the office of Gallatin County Clerk and Recorder as Document 2171082.

NOW, THEREFORE, the Amended and Restated Declaration of Protective Covenants and Restrictions for the Village Boulevard Minor Subdivision and Village Downtown Subdivision were recorded in the office of Gallatin County Clerk and Recorder as Document 2171082 is amended as follows:

The following real property is subject to the Amended and Restated Declaration of Protective Covenants and Restrictions for the Village Boulevard Minor Subdivision and Village Downtown Subdivision were recorded in the office of Gallatin County Clerk and Recorder as Document 2171082:

Lots 1, 2, 3, 4, and 5 of the Village Boulevard Minor Subdivision No. 344, located in the NE1/4 of Section 7 and NW 1/4 of Section 8, Township 2 South, Range 6 East, P.M.M., City of Bozeman, Gallatin County, according to the official plat thereof

[signatures to follow]



**2185463**

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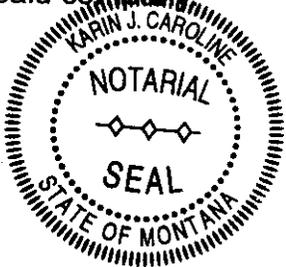
IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 22<sup>nd</sup> day of April, 2005.

**Declarant**  
The Village Investment Group, Inc.

By: [Signature]  
Its pres

STATE OF MONTANA )  
County of Gallatin ) :ss.

On this 22<sup>nd</sup> day of April, 2005, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Michael W. Delaney, known to me to be the president of The Village Investment Group, Inc., who executed the within instrument, and acknowledged to me that he executed the same on behalf of said company.



[Signature]  
NOTARY PUBLIC for the State of Montana  
Printed Name Karin J. Caroline  
Residing at Bozeman, MT 59715  
My Commission expires 3/18/2008

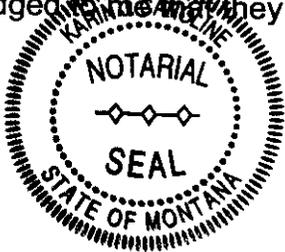
**Owners of an undivided 50%**

[Signature]  
Michael W. Delaney

[Signature]  
Ileana Indreland

STATE OF MONTANA )  
County of Gallatin ) :ss.

On this 22<sup>nd</sup> day of April, 2005, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Michael W. Delaney and Ileana Indreland known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same.



[Signature]  
NOTARY PUBLIC for the State of Montana  
Printed Name Karin J. Caroline  
Residing at Bozeman, MT  
My Commission expires 3/18/2008



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Page: 3 of 3  
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Shelley Vance-Gallatin Co MT MISC 18.00

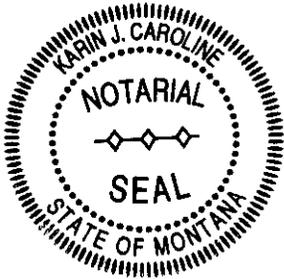
Owners of an undivided 50%

Bill Muhlenfeld  
Bill Muhlenfeld

Anthea George  
Anthea George

STATE OF MONTANA )  
 )  
County of Gallatin ) :ss.

On this 22<sup>nd</sup> day of April, 2005, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Bill Muhlenfeld and Anthea George known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same.



Karin J. Caroline  
NOTARY PUBLIC for the State of Montana  
Printed Name Karin J. Caroline  
Residing at Bozeman, MT  
My Commission expires 3/18/2008

Notary Public for the State of Montana  
RESIDING AT Bozeman, MT  
My Commission Expires  
March 18, 2008