

VALLEY GROVE SUBDIVISION PHASE 3
PROTECTIVE COVENANTS AND RESTRICTIONS

FILM 157A04437

WHEREAS, Cook-Lehrkind Investments, A Montana Partnership, of 2504 West Main Street, Bozeman, Montana, hereinafter referred to as the "developer" or "developers", are the owners in fee simple of those certain lands more particularly described as Valley Grove Subdivision Phase 3, a tract of land being a portion of the SE $\frac{1}{4}$ and of the SW $\frac{1}{4}$ of Section 20, Township 1 South, Range 5 East, M.P.M., Gallatin County, Montana, and hereinafter referred to as the "premises" or the "subdivision"; and

WHEREAS, the developer, by and through the within protective covenants hereby creates and imposes certain covenants, restrictions, limitations, and regulations as to the use of the said premises, which premises have been subdivided and platted into blocks and lots according to the plat thereof known as Valley Grove Subdivision Phase 3, and which plat has been duly filed of record with the office of the Clerk and Recorder, Gallatin County, Montana, and the same is hereinafter referred to as the "plat";

NOW, THEREFORE, the developer does hereby establish, dedicate, declare, publish, and impose upon the premises the following protective covenants which shall run with the land and shall be binding upon and be for the benefit and value of the developers and all persons claiming under them, their grantees, successors and assigns and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the premises and to all improvements placed or erected thereon unless otherwise specifically excepted and shall have perpetual existence unless terminated by law or amended as herein provided.

1. USE & BUILDING & IMPROVEMENT COVENANTS

A. Residential Lots

1. Valley Grove Subdivision Phase 3 has been surveyed into residential lots for single-family residences, except the park tracts which shall be used for recreational purposes or for fire protection facilities, all of which is shown on the plat which is incorporated herein by this reference.

2. No building or improvement shall be placed, constructed, or altered on any single-family residential lot except to provide for a single-family dwelling, an attached or detached private garage, a storage shed, and improvements such as landscaping, trees, hedges, fences, and other like or similar improvements normally placed or installed in and around the yard of a single-family residence. Any plans for a dwelling on any lot shall provide for off-street parking for at least two vehicles, which must include any garage at a minimum size of 22 feet by 22 feet for two vehicles.

3. All property owners, lessees, tenants, visitors, and guests shall have the right of access and use of the park areas which shall be dedicated to the public.

4. A dwelling unit which has one story above ground level, two stories above ground level, or a one story with a partial second story above ground shall be constructed so as to include at least 1200 square feet of living space at or above the ground level. Dwelling units which are split level with the lower level being partially below ground level, shall have not less than 1,000 square feet at or above ground level. All square foot measurements shall be taken exclusive of open porches, patios, carports, garages, or basements. Measurements shall be taken around outside walls.

5. No building, structure, alteration, or improvement shall exceed 25 feet in height as measured from the average level of finished grade.

6. No building or structure shall be erected, placed, constructed, or remodeled so as to be less than 25 feet from the front lot line, less than 15 feet from the side lot lines, or less than 25 feet from the rear lot line. Corner lots shall have a 15-foot setback requirement from the side lot line contiguous to a road. In addition, improvements shall be subject to the construction set-back, greenbelt buffer zone and maintenance easement along Aajker Creek and any other building restrictions or conditions shown on the subdivision plat.

7. There shall be no continuous parking on any street of any vehicle for more than 24 hours. After notice to the owner or as posted on the vehicle, the Owners' Association may have the vehicle towed away and impounded until the costs for such action have been paid.

8. No junk vehicles shall be parked on the street nor retained or parked on any lot. A junk vehicle is one which can not be driven away under its own power.

9. There shall be no buried or above-ground fuel tanks.

10. No commercial use may be made of any lot except that home occupations or hobby-businesses may be conducted out of a residence by the owner or tenant if the following conditions are met:

- a) the business use shall be clearly incidental and secondary to the residential use of the lot;
- b) the business use shall be entirely inside a dwelling, garage, or storage shed, including any storage of materials or equipment;

c) the business use shall not occupy more than 400 square feet, total, of the residence, garage, and storage shed combined;

d) no non-resident employees shall be allowed, nor shall excessive traffic, noise, or pollution generation be permitted;

e) the business use does not constitute a nuisance to neighboring property owners.

The Architectural Committee will determine if these criteria are met and whether or not the home occupation or hobby-business will be allowed.

11. Prior to or at the time of any improvements or construction on any residential lot, the owner must install at his or her expense a 20-foot-wide driveway together with a 15-inch-diameter, at least 20-foot-long, 16-gauge galvanized steel culvert in such driveway.

12. All residences must be substantially completed within one year of the commencement of construction. Substantial completion shall mean that the exterior of the structure is complete and that the siding and roofing have been attached according to the plans approved by the Architectural Committee. Commencement of construction shall mean the date excavation for the foundation begins.

13. No dusk-to-dawn ranch-type yard lights shall be allowed on any lot.

14. Exterior siding on all structures shall be of subdued colors unless otherwise approved by the Architectural Committee. Vertical panelized exterior siding is not allowed unless the Architectural Committee approves the design, materials, location of the siding on the house and the lot owner complies with all the conditions required by the Architectural Committee for the use of such siding.

15. Building materials shall be of standard or better quality and shall be approved for residential construction by the appropriate agencies.

B. Recreation Areas

1. The developer does hereby grant to the Valley Grove Subdivision Phase 3 Owners' Association forever the tracts designated as Parks on the subdivision plat for Phase 3, provided that the maintenance of said park areas shall be undertaken by the Valley Grove Subdivision Phase 3 Owners' Association, which shall have the right to establish reasonable rules and regulations for the use of the parks for recreational areas and for fire protection facilities.

2. Optional use of the park tracts by the Valley Grove Subdivision Phase 3 Owners' Association as recreational areas and for fire protection facilities may include the placing, construction, and remodeling of buildings, structures, and improvements related or pertaining to such uses including, but not limited to, playgrounds, parks, clubhouses, tennis courts, swimming pools, parking, water wells, pipelines, pumping stations for water supply, maintenance and storage buildings, storage facilities for fire protection, shelter and comfort stations, health clubs, together with easements for the installation of any such pipes, lines, wires, or access for such easements as shall be necessary, together with such other easements as the Valley Grove Subdivision Phase 3 Owners' Association may hereafter designate, but in no event shall such construction or such easements be inconsistent with these covenants or detract from the use and development of the remainder of the premises.

2. EASEMENTS

A. Easements for drainage, electricity, natural gas, telephone, lighting, water sewer, cable television, and all other utilities or any other service or utility shall be and is hereby reserved over the lands described herein for the benefit of the owners of the lots and their successors and assigns, and such easements shall be appurtenant to each lot. Notwithstanding the provisions of this paragraph, easements for roads shown on the plat will be deeded to the public.

B. All utilities, pipe, and service lines shall be buried.

C. Easement areas may be landscaped by property owners so as to enhance their appearance so long as the landscaping does not interfere with the use of the area as an easement.

D. After installation, all easement areas must be restored, at the expense of the utility or service entity doing the work, to as near the condition that existed previous to such work as possible. At the discretion of the Architectural Committee or the owner, a bond may be required of the utility or service entity to ensure compliance with this provision.

3. ARCHITECTURAL COMMITTEE

A. There is hereby created an Architectural Committee, hereinafter referred to as "Committee" or "Architectural Committee", which shall consist of three owners. The Committee shall be appointed by the Board of Directors of the Owners' Association. The Committee shall act by majority vote.

B. Each member of the Committee shall serve until he or she resigns or is replaced by the Board of Directors of the Owners' Association.

C. The Committee may adopt such design review criteria, reasonable rules and adopt such procedures as it deems necessary to carry out its functions, which rules and procedures may not be inconsistent with the provisions of these covenants.

D. No building, construction, landscaping, parking, fence, wall, or other improvement shall be commenced, placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to, or maintained on any lot or area until site plans, building plans and specifications, floor plans, elevations, and such other information as the Committee may reasonably require, including without being limited to, colors and building materials have been submitted to and approved by a majority of the Committee and a written building permit is issued to the applicant. The Committee may conditionally approve the plans, subject to the lot owner complying with the Committee's requirements.

E. No mobile homes or modular construction shall be allowed and all construction shall be new on the site, e.g. previously built homes may not be moved into the subdivision and placed on a new foundation.

F. The Committee shall require that all construction and improvements comply with prevailing standards of sound and proper construction.

G. The Committee shall have the authority to reject materials and/or designs submitted with plans, or the plans themselves, if they are not in compliance with these covenants or prevailing standards of design and construction.

H. A lot owner may apply for a variance from the Covenants in cases of minor deviations from the Covenants or in the case of unusual circumstances or hardship. The Committee may recommend to the Board of Directors variances to the building and improvement covenants or minor variances to the other covenants when, in its discretion, it believes the same to be necessary because of unusual circumstances and hardship, or where the same will be a minor variation from the covenants. A written application for a variance must be made to the Committee. The Committee shall recommend to the Board of Directors, granting or denial of the variance. However, the Board of Directors must approve any variance by a majority vote. If a variance is not recommended by the Committee, the lot owner may appeal the decision to the Board of Directors.

I. All improvements, construction, re-construction, alterations, re-modeling, or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. All such construction must be completed within 1 year from the date construction is commenced.

J. The Committee of the Board of Directors shall have the power, authority, standing, and right to enforce the Committee's decision in any court of law or equity when it reasonably believes the same have been violated and shall have the authority to revoke or suspend building permits and/or order suspension or cessation of any construction or work in violation of these covenants or of any permit issued by the Committee.

K. The Committee may require reasonable fees to be paid with the filing of plans and specifications and the issuance of building permits.

L. The Committee shall be governed by the following general guidelines in its consideration of plans and specifications submitted for its approval:

1. A landscape plan must be provided for each residence constructed on a lot.

2. In considering any plans or specifications, the Committee shall examine the suitability of same to the site, including the materials of which it is to be constructed as well as the relationship of the same to the neighborhood and to the adjacent properties.

3. All plans and specifications shall be in full compliance with all of the terms and provisions of these covenants except for any variances which may be granted by the Committee for such plans and specifications.

4. All plans and specifications must be acted upon by the Committee within 30 days of the day they are submitted or they will be deemed to have been approved; provided, however, that the improvements must still comply with the applicable provisions of these covenants.

5. The committee may adopt reasonable written guidelines for improvement of the lots, notify the lot owners of the guidelines and make the written guidelines readily available to the lot owners. From then on, the written guidelines shall be effective and binding upon each lot owner.

M. The Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action, or lack of action, taken pursuant to these covenants, including, but not limited to, damages which may result from correction, amendment, change, or rejection of plans, the issuance of building permits, or any delays associated with such action on the part of the Committee.

4. OWNERS' ASSOCIATION

A. A Owners' Association is hereby established, known as Valley Grove Subdivision Phase 3 Owners' Association, hereinafter referred to as the "Owners' Association" or "Association", for the purpose of promoting, developing, maintaining, and operating the subdivision and the area, and performing the duties and responsibilities posed upon the Association in accordance with those Covenants and the laws and regulations of the State and County of Gallatin, and assessing for the costs and expenses of its duties and responsibilities, including water rights, recreational facilities, and fire protection facilities as may be more specifically designated; as well as all road maintenance, grading, graveling, snow removal, and/or surfacing. All owners of real property within the subdivision shall be members of such Owners' Association and shall be bound by the provisions of the Articles of Incorporation (if any) and the By-laws of such Association. Lot-owners shall have one vote per lot on any issue to come before the Association. The Owners' Association shall be incorporated as a non profit, mutual benefit Corporation under the laws of the State of Montana by the Directors.

B. The Owners' Association shall be governed by a Board of Directors elected each year at that annual meeting by a majority of members present or voting by proxy, one vote for each lot. The Board shall have the powers and duties necessary to enforce and carry out the Association's functions as set forth in these covenants and as set forth in the Articles of Incorporation (if any) and the By-laws of the Owners' Association. The Association, through its Board, shall have the authority to make such charges and assessments to the members for the costs of operating and maintaining the subdivision facilities, including roads, water supply facilities, fire protection facilities, recreational facilities, and other amenities, and as are reasonably necessary to carry out its responsibilities and duties. The Association shall have the power to levy assessments, which assessments may be in two classes: Capital Assessments and Operating Assessments.

C. Such Assessments shall be levied by the Board of Directors of the Association against the owners and the lots within the Valley Grove Subdivision Phase 3. Assessments shall be billed at such times as the Directors shall determine, and notice of the amounts shall be mailed to each property owner. The assessments shall be assessed against each homeowner equally and against each vacant lot owner equally. It shall be in the Board's sole discretion whether or not to set a different rate for lots with a home and for vacant lots. All assessments become due 30 days after the date of mailing. The Association has the authority to impose reasonable charges for interest, not to exceed the legal rate of 10% per annum, and penalties for overdue payments. Assessments must be based upon an annual budget prepared and submitted to the membership in advance of or

at the annual or special meeting, and the budget must have the approval of a majority of the members present and voting in person or by proxy. No increase may be made in the budget without the prior approval of a majority of the membership votes present or represented by proxy at an annual or special meeting. Unpaid assessments, upon notice thereof being duly filed of record with the Clerk and Recorder of Gallatin County, shall be a lien against the parcel of real property against which said unpaid assessment was made. Such lien may be foreclosed upon in like manner as a mortgage on real property, which foreclosure proceeding may include the addition of interest, court costs, expenses, and reasonable attorney's fees.

D. As provided in sub-paragraph 5 B below, the central water system for the subdivision will be transferred to the Owners' Association. The Owners' Association shall be required to accept the water system and assume complete ownership, control, responsibility, and management.

5. WATER AND SEWAGE

A. All improvements or structures designed for occupancy or use by humans shall be connected with domestic water facilities constructed or installed by the developer. Separate septic tanks and drain fields shall be installed by the lot owners for each residence. At such time as central domestic sewer system becomes available, lot owners may elect to hook on to that system.

B. The Developer will manage and operate the domestic water system until the system is full and operational. Thereafter the developer shall turn the water system over to the Owners' Association.

The Owners' Association shall manage, operate, and maintain the domestic water system to be installed by the developer. All lot owners shall hook up to the domestic water system when a residence is constructed on a lot.

1. Each home will purchase a water meter from the Owners' Association. The meter will include a remote readout.

2. Monthly water rates shall be set by the Board of Directors of the Owners' Association. Such fee shall include a provision for establishment of a reserve fund for replacement, maintenance, and emergencies.

3. The rates may be increased or decreased by the Board to regulate water use. A reserve fund of at least \$5000 shall be established and maintained. This reserve fund shall be a separate water supply maintenance fund and shall be used only for the repair and maintenance of the water system. Each year the Board of Directors shall determine and establish a sufficient assessment against each of the