

DECLARATION
Of
Conditions, Covenants, Restrictions and Easements
Affecting the Real Property Known as
Skyview South and Skyview North

THIS DECLARATION made by BE DEVELOPMENT COMPANY, LLC, a South Dakota Limited Liability Company, hereinafter called Declarant.

WITNESSETH:

WHEREAS, the real property affected by this Declaration is more particularly described as Lots 1 through 10 of Block 1 of Skyview South Subdivision, and Lots 1 through 11 of Block 1, and Lots 1 through 11 of Block 2 of Skyview North Subdivision.

WHEREAS, Declarant is the owner of a residential area in the City of Rapid City, Pennington County, South Dakota, as more specifically set forth above (hereinafter called "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance and for the convenience of the covenants, restrictions and easements hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant declares that the real property, Skyview South and Skyview North, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and easements (sometimes herein referred to as "covenants") hereinafter set forth.

ARTICLE I
COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE SUBDIVISION

Single Family Residential Restrictions.

Section 101. All lots and building sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any lot of building site.

Section 102. No structure shall be erected within the Subdivision except single-family dwellings and those accessory structures that have been approved in writing by Declarant. No structure other than a dwelling, no accessory building other than a guesthouse or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other structure may be placed on any building site before completion of the dwelling upon such building site except with the written permission of the Architectural Control Committee.

Section 103. No tent, treehouse, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lot at any time except with written permission of Declarant or except as provided in Section 108.

Section 104. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a lot or building site except as expressly hereinafter provided for temporary buildings.

Section 105. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 106. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 107. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without written permission of Declarant, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 108. Temporary buildings for use in connection with construction within the Subdivision or in connection with sales of new homes or lots may be erected or maintained and model homes may be used and exhibited by Declarant or with the written permission of Declarant. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary buildings shall be promptly removed when no longer used for the designed purposes.

Section 109. No derrick or other structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of said property, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

Section 110. Any lease agreements between an Owner and a lessee shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration, and that any failure by the lessee to comply with the terms and provisions of this document shall be a default under the lease. Further, all leases shall be in writing. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval ownership will be permitted if such are determined by the Declarant within five (5) years after the Declarant first conveys a lot in the Subdivision and thereafter, by the Architectural Control Committee to result in a pattern of short-term occupancies of a dwelling by several different non-related users.

Easements

Section 111. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across:

each of the fifteen foot (15') strips along and adjoining rear lot line of each lot as shown on the plat of the Subdivision, and

each of the fifteen foot (15') strips along and adjoining each side lot line of each lot as shown on the plat of the Subdivision,

for use of all or part of such areas for lines of transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 112. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

Section 113. An easement access for the purpose of providing developer the access and use of the natural spring water shall run with the land on Block 1, Lot 5 of SkyView South.

Density, Setback, and Quality Standards.

Section 121. No more than one dwelling shall be erected or maintained within any building site, to-wit: a lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved in writing by Declarant and aggregating not less than six thousand (6,000) square feet.

Section 122. No motor vehicle shall be parked on any street. The structures on each lot or building site shall include a fully enclosed garage to accommodate at least two (2) private passenger motor vehicles. The site improvements on each lot or building site shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles.

Section 123. Except with written approval of Declarant, no building, porch, eave, overhang, projection or other part of a building shall be located within twenty-five feet (25') of a front lot line, or within fifteen feet (15') of a side lot line. Such approval may be given only (1) for fireplace projections integral with the building, (b) for eaves and overhangs, (c) for construction which extends less than five feet (5') into the setback area and which the Architectural Control Committee determines to have only minor impact, to be minor in nature and to be in the interest of superior design. Except with written approval of the Architectural Control Committee, no fence more than two feet (2') high and no hedge more than two feet (2') high shall be installed or maintained at any location on a lot which is closer to an adjoining street than the dwelling or any other building situated on the lot. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Rapid City, Pennington County, South Dakota, which regulations may vary from the provisions of this Section and other Sections.

Section 124. No dwelling shall be erected which, exclusive of basements, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable floor area of less than 1,200 square feet if a single story dwelling or less than 1,600 square feet if a multi-level dwelling.

Section 125. No dwelling shall be more than two and a half (2-1/2) stories in height. Except with the prior permission of the Architectural Control Committee, accessory buildings and other structures shall not be more than one (1) story in height, no one-story structure, including one-story dwellings, shall be more than twenty-eight feet (28') in height and no two-story structure shall be more than forty feet (40') in height. Height shall be measured from the highest original ground contour at any point adjoining the foundation perimeter of the structure to the highest point on the structure exclusively of standard chimneys. Original ground contour shall mean the ground contour established during development of the lots and existing immediately prior to commencement of construction of any dwelling or other structure.

Section 126. No aerial or antenna, including satellite dishes, for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building or nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

Section 127. Each owner shall maintain the exterior of the dwelling, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing become weather-beaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawns, shrubs, trees, other landscape material, fences, signing, mailboxes and outdoor lighting.

Section 128. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris must be removed and the lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months.

Fire Safety

Section 129. Fire Safety – Living trees naturally existing upon a lot, except to the extent necessary for construction purposes, shall not be cut down or removed from any property. Routine thinning, in conformity with wildlife mitigation practices, shall be followed. To address the natural fire hazards that exists in this area, the following precautions shall be taken to help insure the safety of all residences in the subdivision:

Section 130. Avoid flat roof homes where leaves, needles or other flammable debris can accumulate.

Section 131. Roof cover should be concrete shingles, or at a minimum shall have a UL Class A fire resistance rating. Asphalt and/or fiberglass shingles that meet this rating shall also have a simulated random surface variation of natural roofing materials.

Section 132. Roof coverings shall be of noncombustible material.

Section 133. Any open spaces around footings and foundations shall be enclosed. If left open they can trap burning embers being carried by the wind.

Section 134. All residences shall maintain a mowed and watered lawn around the residence on all sides to create a "green" safety zone.

Section 135. Stack firewood in an open area. Firewood piles shall not be larger than 4 feet by 15 feet. No firewood is permitted to be stored under porches or decks. This creates a fire hazard for the homeowners and neighbors.

Section 136. Thin trees within 30 feet of the home site on level ground. Adequate thinning is reached in the 30-foot area when the tree crowns do not touch each other. After thinning, trees remaining within two tree heights of structure should be pruned of dead limbs to a height of 10 feet.

Section 137. Plant landscaping material that will minimize the "ladder" effect. This is described as vegetation that may allow a fire to burn from ground level to lower tree branches. Maintain a mixture of tree species.

Section 138. Expressly prohibited are combustible materials for exterior finishes; shiny exterior sidings such as plastic or steel siding. The exterior finish should have earth tones.

Living Environment Standards.

Section 141. Each Owner shall prevent the development of an unclean, unsightly or unkept condition of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area. No building material shall be stored on any lot, except temporarily during continuous construction of a building, unless enclosed out of view in a service yard or within a building.

Section 142. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 143. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 144. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 145. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections.

Section 146. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on on any lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any living unit.

Section 147. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any building site.

Section 148. Within six (6) months after completion of a dwelling or within any extension of that period granted in writing by Declarant, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape.

Section 149. All such yards and open spaces and the entire area of every lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the opinion of Declarant are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the opinion of Declarant causes undue danger of fire.

Section 150. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulated on the lot. This provision shall not apply to the Developer during the construction phase.

Section 151. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

Section 152. No killing or trapping of deer, wild turkeys or other animals shall be permitted at any time on any lot within the subdivision.

Restrictions Requiring Permission from Declarant.

Section 161. Except as Declarant may from time to time grant written permission, which permission shall be revocable:

- a) No aerial or antenna, including satellite dishes, for transmission of radio or television or other electronic signals for transmission of radio or television or other electronic signals may be maintained or erected within the Subdivision. No electronic or radio transmitter of any kind other than garage door openers shall be operated in or on any structure or within any building site.
- b) No animals except domesticated birds or fish and other small domestic animals permanently confined indoors and except an aggregate of two (2) domesticated dogs or cats shall be maintained in or on any lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.
- c) No boat, trailer, camper (on- or off-supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, any truck, any vehicle designed principally for hauling articles or material rather than for the private conveyance of individuals, or any other vehicle shall be parked on any street or within any lot or building site except in a completely enclosed structure, or fully screened in a manner approved by Declarant so as not to be visible at ground level from any neighboring property or street.
- d) No stripped down, partially wrecked or junk motor vehicle or sizeable part thereof shall be permitted to be parked on any street or on any lot in such manner as to be visible at ground level from any neighboring property or street.

- e) No maintenance, servicing, repair dismantling or repainting of any type of vehicle, boat, machinery or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.
- f) No sign shall be permitted on any lot or structure. Declarant may not permit any signs except:
 - 1) One sign of customary size for offering of the signed property for sale or for rent;
 - 2) One sign of customary size for identification of the occupant and address of any dwelling;
 - 3) Multiple signs for sale, administration and directional purposes during development;
 - 4) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger;
 - 5) Such signs as may be required by law; and

Declarant may from time to time grant blanket, revocable permission for some or all type of signs mentioned. Except for permitted signs there shall not be used or displayed on any lot or structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

Architectural Control by Declarant.

Section 171. No structure shall be commenced, erected, placed, moved onto a lot, permitted to remain on any lot or altered in any way so as to change materially its exterior appearance, and no landscaping material of any type shall be installed on any lot, except in accordance with plans, specifications and other information submitted to Declarant and approved by Declarant in writing not more than two (2) years before start of the construction, alteration or installation. Matters which require the approval of Declarant include but are not limited to the exterior appearance, material, color, height, location of each structure, drive, walk and fence and grading of site, and location and type of any landscape material including grass, ground cover, ornamental rock, shrubs and trees. In granting or withholding approval, Declarant shall consider, among other things, the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the uses, and the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in an urban residential area from considerate neighbors.

Section 172. All plans, samples and other materials to be submitted to Declarant shall be submitted in duplicate. The minimum scale of such plans shall be 1/20th inch = 1 foot. The plot plan in said minimum scale shall show the location of all buildings, drives, walks, fences and any other structures. Proposed new contours throughout the lot and abutting street elevations on all sides shall also be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If requested, a soils report for the building site shall be supplied to Declarant. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, ornamental rock, shrubs, trees and other plant materials for all the area of the lot not covered by structures. The type of all plant materials shall be indicated.

Section 173. A written statement of the approval or disapproval or other action by Declarant shall establish the action of Declarant and shall protect any person relying on the statement. If Declarant does not execute and acknowledge such a statement within forty-five (45) days after delivery of all the required materials to Declarant the material so delivered shall stand approved for the purpose of these covenants. Declarant shall be entitled to retain one copy of all approved plans as part of its files and records.

Variances.

Section 181. Declarant shall have the authority to grant for a lot of building site a variance from the terms of one or more of Sections 107, 112, 123, 124 and 137 subject to terms and conditions fixed by the Architectural Control Committee as will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of all those Sections will result in unnecessary hardship. Following an application for a variance:

- (a) Declarant shall call a meeting of Owners of lots in the Subdivision to be held at Declarant's principal office, notice of which meeting shall be given to the Owner's at least twenty (20) days in advance, at which meeting all Owners shall have opportunity to appear and express their views.
- (b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, Declarant shall within one (1) week after the meeting either grant or deny the variance.
- (c) A variance granted hereunder shall run with the lot or building site for which granted.
- (d) If a variance is denied another application for a variance for the same lot of building site may not be made for a period of one (1) year.

- (e) A variance shall not be granted unless Declarant shall find that all of the following conditions exist:
- i. the variance will not authorize the operation of a use other than private, single-family residential use;
 - ii. owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;
 - iii. the variance will not substantially or permanently injure the use of other property in the Subdivision;
 - iv. the variance will not alter the essential character of the Subdivision;
 - v. the variance will not weaken the general purposes of these covenants;
 - vi. the variance will be in harmony with the spirit and purpose of these covenants;
 - vii. the circumstances leading the applicant to seek a variance are unique to the lot or building site or its owner and are not applicable generally to lots in the Subdivision or their owners.

ARTICLE II ARCHITECTURAL CONTROL COMMITTEE

Declarant's Successors and Assigns.

Section 201.

- (a) Five (5) years after Declarant first conveys a lot in the Subdivision to a purchaser or at such earlier time as Declarant may choose, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other functions, rights, powers and responsibilities under Sections 102, 103, 107, 108, 121, 123, 125, 148, 149, 151, 161, 171, 172, 173 and 181, to an Architectural Control Committee of three (3) members, each of whom shall be an Owner of a Lot in the Subdivision; or the owner of a lot in such other single-family residential subdivisions in the same general area as are determined by Declarant to contain lots substantially similar in size, character and value to Lots in the Subdivision; or an officer, director or employee of Declarant.

- (b) Thereafter, any one or more members of the Architectural Control Committee may from time to time be removed and their successor or successors designated by an instrument signed and acknowledged by the Owners of at least fifty percent (50%) of the lots in the Subdivision and filed for record with the Register of Deeds of Pennington County, South Dakota.
- (c) The Architectural Control Committee may delegate to one of its members any or all of the functions and powers of the committee and until such delegation is revoked or modified the action of the member to whom such delegation is made shall constitute the action of the committee for the purposes of these covenants.
- (d) The committee may take action without a meeting by a written statement signed by the members of the committee or by their delegate.
- (e) Vacancies in the Architectural Control Committee may be filled by action of the remaining member or members of the committee, subject always to the power of the Owners to remove and designate members of the Architectural Control Committee pursuant to Section 201(b).
- (f) Declarant, or its successor Architectural Control Committee, may, if it determines such action to be in the best interest of the Owners, cause the Architectural Control Committee for the Subdivision to be merged with the Architectural Control Committees of other single-family residential subdivisions in the same general area that contain lots of substantially similar size, character and value as Lots in the Subdivision. Such merger shall be accomplished by filing with the Register of Deeds of Pennington County, South Dakota, a written document signed by Declarant, or by the Architectural Control Committee for each subdivision participating in such merger, acknowledging the action and appointing an Architectural Control Committee for the merged group. Thereafter, all functions of the predecessor individual Architectural Control Committees will be performed by the new merged Architectural Control Committee, and the substitution of members provided for in Section 201(b) will require action by fifty percent (50%) of the owners of Lots in all of the subdivision in the merged group.

Officers and Agents Excused from Liability.

Section 211. Declarant, the officers and directors, members and agents of Declarant, and the members of the Architectural Control Committee shall not be liable to any party whatsoever for any act or decision unless the act of decision is in bad faith and amounts to fraud.

Declarant Can Remedy Violations.

Section 221. Until the time for establishment of the Architectural Control Committee as provided by Section 201(a), Declarant, and after its establishment the Architectural Control Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the lot where a breach occurs or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach, and the intent of the Committee or Declarant to invoke this Section unless within a period stated in the notice, not less than five (5) calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice the Committee or Declarant (whichever gives the notice) may cause the breach to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the Committee or Declarant shall be paid by the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of twelve (12%) per annum and plus costs of collection, shall be a lien on the ownership interest in the lot (including improvements thereon) of each person so notified and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection against the Owner personally obligated to pay and may bring an action to foreclose the lien against the lot and improvements subject to the lien and there shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest as above provided and a reasonable attorney's fees to be fixed by the court, together with the costs of the action. The foregoing specified rights and remedies shall not limit the rights of any lot owner to enforce these covenants as otherwise may be provided by law or equity.

ARTICLE III GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Definitions.

Section 301. The following words and expressions as used in these covenants have the meanings indicated below unless the context clearly requires another meaning:

Accessory Building: Detached garages, patios, swimming pools, dressing rooms for swimming pools, separate guest houses without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence.

Building Site: A lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved by Declarant and aggregating not less than six thousand (6,000) square feet.

Cost of Collection: All expenses and charges incurred, including attorney's fees.

These Covenants: This declaration and the provisions contained in it.

Lot: Each area designated as a lot in the recorded plat of the Subdivision.

Lot Lines: Front, side and rear lot lines shall be the same as defined in the zoning regulations of the City of Rapid City, Pennington County, South Dakota, in effect from time to time; in the absence of such a definition a front lot line is each boundary line (whether one or more) between the lot and any public street. A side lot line is any boundary line which meets and forms an angle with a public street except that for a corner lot with two front lot lines, the side lot line is the boundary which forms an angle with the street which affords the principal access to the lot.

Owner: Person having an ownership interest in a lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

Structure: Any thing or device other than trees and landscaping, the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limiting any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters upon or across any lot of which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any lot.

The subdivision: The area subdivided as SkyView South Subdivision or SkyView North Subdivision according to the plat recorded in the office of the Register of Deeds of Pennington County, South Dakota.

Enumeration Inclusive: A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

Captions.

Section 310. Captions, titles and headings in these covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

Declarant Resolves Questions of Construction.

Section 320. If any doubt or questions shall arise concerning the true intentment or meaning of any of these covenants, Declarant or the Architectural Control Committee shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged by Declarant or the Architectural Control Committee and filed for record with the Register of Deeds of Pennington County, South Dakota, the meaning, effect and application of the provision.

Covenants Run with the Land.

Section 330. These covenants shall run with the land and shall inure to and be binding upon each lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any lot in the Subdivision.

Covenants are Cumulative.

Section 340. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provisions.

These Covenants May Not be Waived.

Section 350. Except as these covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these covenants. Avery person bound by these covenants is deemed to recognize and agree that it is not the intent of these covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these covenants that these covenants have been waived or impaired or otherwise invalidated by a precious failure or neglect to enforce them.

Right to Enforce the Covenants.

Section 360. These covenants are for the benefit of the Owners, jointly and severally, and of Declarant and the Architectural Control Committee and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Declarant or the Architectural Control Committee or any combination of them. All costs, including reasonable attorneys' fees, incurred by Declarant or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant or the Architectural Control Committee (alone or in combination with owners or the Declarant) shall be paid by the party determined to have violated the covenants.

Duration of Restrictions.

Section 370. These covenants shall run with the land and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Architectural Control Committee, the SkyView South Homeowners Association, SkyView North Homeowners Association or the owners of any lot subject to these covenants, their legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date these covenants are recorded, after which time they shall be automatically extended for successive periods of ten (10) years. These covenants may be amended by an instrument signed by not less than seventy-percent (70%) of the first mortgagees (based upon one vote for each first mortgagee owned) and owners (other than Declarant) of the individual lots during the initial twenty (20) years, and thereafter, by an instrument signed by not less than sixty percent (60%) the mortgagees (based upon one vote for each first mortgage owned) and owners (other than Declarant) of each lot, except that any amendment which would permit a material change in the maximum densities, uses or exterior appearance of the properties must be signed by not less than eighty-five percent (85%) of all first mortgagees (based upon one vote for each first mortgagee owned) and owners (other than Declarant) of the individual lots. Any amendment must be recorded.

Section 371. The above recited requirements for amending these covenants shall not be applicable to any amendments made by the Declarant within five (5) years from the date Declarant conveys the first lot to an owner, so long as any amendments made pursuant to this section are required to bring these covenants into compliance with the requirements of any governmental or quasigovernmental organization, financial institution or authority.

Section 372. Section III concerns property rights which can be changed only by conveyances, releases or others appropriate legal instruments executed by those to whom such property rights belong.

Coverability.

Section 380. If any of these covenants shall be held invalid or become unenforceable the other covenants shall in no way be affected or impaired but shall remain in full force and effect.

Action in Writing, Notices.

Section 390. Notices, approval, consents, extensions, applications and other action provided for or contemplated by these covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, extension, applications or other action. Permission, consent or approval of Declarant or the Architectural Control Committee under these covenants is not effective unless in writing.

Section 391. Any writing described in Section 390 above, including but not limited to any communication from Declarant the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situated on the lot owned by that owner; or (b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee, and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

IN WITNESS WHEREOF, the parties have hereunto executed these covenants on this 22nd day of October, 2001.



DECLARANT:

BE DEVELOPMENT COMPANY LLC,
a South Dakota Limited Liability Company

By: Joseph M. Butler
Its President

State of South Dakota)
) ss
County of Pennington) State of South Dakota County of Pennington
Filed this ____ day of _____, 2001, at ____ o'clock __M Book ____ Page ____

Register of Deeds Deputy Fees \$ _____

On this 22nd day of October, 2001, before me, the undersigned officer, personally appeared Joseph M. Butler, who acknowledged himself to be the President of BE Development Company LLC, a South Dakota Limited Liability Company, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal.



Swerni M. Peck
Notary Public, South Dakota
Commission expires: 04-15-03

Document Prepared By:
Name: WYSS ASSOCIATES INC.
Address: 720 SIXTH STR.
RAPID CITY SD
Telephone: 605 348 2268