

PREPARED BY:

City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

CRC
3-25-12

RESTRICTIVE COVENANT – ROAD MAINTENANCE

The undersigned, on behalf of Village at Skyline Pines, LLC, of Rapid City, South Dakota, herein after referred to as “Owner,” and the City of Rapid City, a municipal corporation, herein after referred to as “City,” for themselves, their successors in interest, and assigns, covenant and agree as follows:

WHEREAS, Owner is the owner of certain property in the City of Rapid City, County of Pennington, State of South Dakota, which is legally described as follows:

Tract 1 of Skyline Pines East Subdivision, located in the N 1/2 of the SE 1/4 of Section 11, Township 1 North (T1N), Range Seven East (R7E) of the Black Hills Meridian, Pennington County, South Dakota; and

WHEREAS, Owner submitted an application for a Final Planned Development Overlay to allow an assisted living facility on the property described above; and

WHEREAS, on February 7, 2013 the Planning Commission approved Owner’s application for a Final Planned Development Overlay to allow an assisted living facility; and

WHEREAS, a stipulation of approval for the Final Planned Development Overlay application states that prior to submittal of a building permit application Owner shall submit to the City a covenant agreement concerning maintenance of the private street that will encircle the proposed development and will tie into Fairmont Boulevard; and

WHEREAS, the City will not issue a building permit concerning the property without a legally binding agreement for street maintenance.

NOW THEREFORE, the parties hereto, for themselves, their successors, and assigns, agree as follows:

1. Maintenance – That the cost of street maintenance, including grading, surfacing, dust control measures and snow removal, for the private street Owner intends to construct in the planned development shall be the sole responsibility of Owner, its heirs and/or assigns, until such time as said street shall fall within the adopted road maintenance jurisdiction and authority of another entity, including, but not limited to Pennington County, the City of Rapid City, and/or

any road district established for the purposes of maintenance of said portion of right of way. The parties agree that no

2. Duration – This restrictive covenant is intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term, as permitted by law, this restrictive covenant will automatically renew and be extended for an additional maximum term as may be permitted by law.

3. Effect of Waiver – The covenant contained herein shall be deemed as continuing. Any failure or delay in enforcing the same, on any occasion, or repeated occasions, shall not impair or affect the covenant so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of the covenant herein contained shall be construed to be a waiver of any other breach of the same or other covenant, nor shall failure to enforce any one of the restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

4. Enforcement – The City shall have the right to enforce, by any proceeding at law or in equity, any covenant imposed herein. Violation of any covenant contained in this declaration shall give the City the right to enter upon the land where the violation has occurred and at the expense of the property owners referred to above abate and/or remove the same. The owner or owners of the above described property agree to pay the City for any assessments, costs or expenses incurred by the City for any street maintenance work on the private road discussed herein due to the property owners' failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the owner.

5. Binding Effect – This restrictive covenant shall be deemed to be binding upon the parties hereto, their successors and assigns, and any persons having or holding any interest whatsoever in and to the above described property.

6. Authorization – This Agreement is made and entered into by the Director of Community Planning and Development Services pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2011, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:
(SEAL)

Dated this 18 day of April, 2013.

VILLAGE AT SKYLINE PINES, LLC

By Bruce Schreiner
Its Member

STATE OF Nebraska)
COUNTY OF Hall)ss.

On this 18 day of April, 2013, before me, the undersigned officer, personally appeared Bruce Schreiner, who acknowledged himself to be the Member of Village at Skyline Pines, LLC and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained on behalf of Village at Skyline Pines, LLC.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Roseann M Helgoth
Notary Public, State of Nebraska
My Commission Expires: 5/27/16

[SEAL]

