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## AMENDED PROTECTIVE COVENANTS

This declaration of amended protective covenants is made and published this 2nd day of May, 2007 by Paul A. Johnson and Carmain D. Johnson, husband and wife, hereinafter referred to as developers of Charles Mix County, South Dakota. Also signing the amended protective covenants are owners of Lots sold by developers, to-wit:

Owners of Lots sold within Riverside Acres an addition in the East One Half (E½) of Section Twenty-Three (23), Township Ninety-Eight (98) North, Range Sixty-Nine (69), West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota:

Jeff L. Friessen and Robin A. Friessen, owners of Lot Three (3), Block Five (5);

Glenda J. Huggins, owner of Lot Six (6), Block Five (5);

Galen D. Vanderpol and Monica S. Vanderpol, owners of Lot Seven (7), Block Six (6);

Kevin H. Hagen, owner of Lot Ten (10), Block Six (6);

William Joe Weins and Laura Weins, owners of Lots Four (4) and Five (5), Block Five (5);

Brian Mohr and Becky Mohr, owners of Lot Two (2), Block Five (5);

Donald Menning and Kathleen Menning, owners of Lot Ten (10), Block Eight (8).

Owners of Lots sold within Platte Creek Riverside Acres an addition in the East One Half (E½) of Section Twenty-Three (23), Township Ninety-Eight (98) North, Range Sixty-Nine (69), West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota:

Mark Morehouse, owner of Lot Fifty (50);

and Gary Nelson and Paula Nelson, owners of Lot Forty-Seven (47).

*WITNESSETH:*

WHEREAS, developers did on the 3<sup>rd</sup> day of June, 2002, cause to be signed "PROTECTIVE COVENANTS" which protective covenants were filed for record on the 6<sup>th</sup> day of June, 2002, at 10:00 a.m., and recorded in book Forty-Six (46) of miscellaneous records at pages Four Hundred Seventy-Six (476) through Four Hundred Eighty (480). Said document made reference to the legal description of the property; involved the name of the surveyor i.e., (Ronald L. Gronewold) and identified the recording information of a plat for (Riverside Acres).

WHEREAS, said survey conducted by Ronald L. Gronewold contained errors. As a result of the survey errors, developers re-surveyed and re-platted the development contained in said East One Half (E½) of Section Twenty-Three (23), Township Ninety-Eight (98) North, Range Sixty-Nine (69), West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota. The new plat known as Platte Creek Riverside Acres an addition in the East One Half (E½) of Section Twenty-Three (23), Township Ninety-Eight (98) North, Range Sixty-Nine (69), West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota, vacated portions of the plat as prepared by surveyor Gronewold and recorded in book D One Hundred Eleven (111) on page Twenty-Seven (27). The property of the development sold to all of the above identified owners with the exception of Gary & Paula Nelson and Mark Morehouse, remained intact and remains property of that plat known as (Riverside Acres).

WHEREAS, the developers and owners of all Lots sold desire to amend the protective covenants by the filing of these amendments.

WHEREAS, the purpose of this Amended Protective Covenants, is to place of record Protective Covenants and Use Restrictions running with the land and concerning the Lots sold within the plat known as Riverside Acres as recorded in book D, One Hundred Eleven (111) page Twenty-Seven (27) and to also effect and be enforceable as rights and privileges against all land located within the new plat identified as Platte Creek Riverside Acres an addition in the East One Half (E½) of Section Twenty-Three (23), Township Ninety-Eight (98) North, Range Sixty-Nine (69), West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota". Said plat being recorded in book D, Two Hundred Fifty-Nine (259) on slide Ninety-Nine (99) and recorded on the 9<sup>th</sup> day of February, 2006 at the Charles Mix County, Register of Deeds office.

WHEREAS, it is to the interest, benefit and advantage of the developers and to each and every person, who shall thereafter purchase any lot in said development that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared to be covenants running with the land;

NOW THEREFORE, for and in consideration of the premises and of the benefits to be derived by the developers and each and every subsequent owner of any of the lots in said development, developers do hereby set up, establish, promulgate and declare the following

protective covenants to apply to all of said lots and to all persons owning said lots; these protective covenants shall become effective immediately and run with the land and shall be binding on all persons claiming under and through the developers, to wit:

Article I  
ASSOCIATION MEMBERSHIP

1. Membership: Every owner as hereinafter defined, shall be deemed to have a membership in the association as hereafter defined. No owner, whether one (1) or more persons, shall have more than one membership per lot owned. In the event the owner of a lot is more than one person, votes and rights of use and enjoyment shall be as hereinafter provided. The rights and privileges of membership may be exercised by a member or the member's spouse, subject to the provisions of this declaration and by-laws of the association. The membership rights of a lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the owner in a written instrument provided to the secretary of the association, subject to the provisions of this declaration and the association's by-laws. Membership shall be appurtenant to and may not be separated from ownership of any lot.

A) *Definition of "owner"*. Owner shall mean and refer to one or more persons who hold the record title to any lot which is part of the properties subject to this protective covenant declaration, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a lot is sold under a recorded contract of sale and the contract specifically so provides, then the purchaser, rather than the fee owner, will be considered the owner. If a lot is subject to a written lease with the term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the board of directors of the association, the lessee, rather than the fee owner, will be considered the owner for the purposes of exercising all privileges of membership in the association.

B) *Definition of (association)*. Means the Riverside Acres Homeowner's Association, Inc.

2. Associations Responsibilities: Part of the responsibility of the board of directors of the association, and not by limitation, consists of caring for and maintaining the access roads of Riverside Acres subdivision. The board of directors of the association is hereby given the authority to make assessments against owners of lots for association expenses as made from time to time as specifically authorized by the board of directors. Such assessment shall be paid in such manners and on such dates as may be fixed by the board of directors. If such assessment is not paid by the lot owner the board of directors may cause for filing a lien upon any lot, the owner of which is delinquent in paying his assessment. Such lien, when delinquent, may enforced by suit, judgment and foreclosure.

A) The Developers of Riverside Acres are exempted from being assessed any expense or assessment for lots they own and remain unsold.

B) Building Compliance. Before any lot owner constructs or causes to be located any building, including a residence upon any lot, he shall first present a building plan to the board of directors of the association or a Design Review Committee appointed by the board, for review. It is the intent that structures are aesthetically appealing so as to preserve the integrity and marketability of all lots located withing Riverside Acres subdivision. No lot owner can construct a building or locate a building upon a lot prior to the written approval of the board of directors or the committee they so appoint to oversee any such building projects. The board of directors of the association shall have the power to seek relief in court for violations of these covenants or by-laws of the association, to abate nuisances or obtain injunctive relief.

C) Any member of the board of directors or committee member sitting as a member of the design review committee shall have the right during reasonable hours and after reasonable notice to enter upon any lot to inspect for the purposes of ascertaining whether or not covenants contained in this declaration have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

## Article II USE RESTRICTIONS

1. Sewage disposal: A septic tank and proper drain field in accordance with the standards of the health department of the State of South Dakota will be used for sewage disposal for houses constructed on said subdivision lots.
2. Temporary Structures: No structure of a temporary character such as a basement, trailer, camper, tent, shack, garage, barn or other out building will be used on any lot at any time as a residence either temporarily or permanently. The exterior of all structures to be constructed on any of said lots shall be completed within twelve months from the date that construction begins.
3. Mobile Homes: No mobile home of any type will be used, built or located on any lot at any time either temporarily or permanently. This provision however, is not applicable for Lots One through Seven.
4. Land Use: Lots shall be used for residential purposes only however, a professional business may be operated from within the home. No building shall be erected on any lot that will be used as a commercial business of any type.
5. Easements: Easements for the installation and maintenance of utilities are reserved whereby a power line and waterline with all essential clearing may be

installed along the roads which traverse the above described lots. All utilities shall be underground.

6. Architectural Control: Concrete block construction is prohibited unless covered with rock, brick or wood. No shiny tin roofs shall be permitted however, colored metal roofs are allowed. All construction shall comply with all local and state codes and to be a reasonable architectural design. All structures must be aesthetically pleasing.

7. Nuisances: Noxious or offensive activities shall not be carried on upon any lot nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. No offensive, noisy or illegal activity shall be permitted upon any lot nor shall any lot be used for any illegal purpose. No recreational use of all-terrain vehicles, dirt bikes, motorcycles, four-wheelers or any similar type of vehicle shall be permitted within the subdivision. These vehicles shall be used within the subdivision for transportation only and shall not be operated in a manner that would constitute an offensive, noisy or obnoxious activity.

Each lot will be kept and maintained completely free of any junk, trash and garbage (including old vehicles and discarded appliances). Trash shall be properly stored in containers and regularly hauled to the garbage dump. Lawns shall be maintained and mowed.

8. Pole Buildings: No pole buildings will be erected or allowed to be erected.

9. Home Dimension: No residence shall be constructed or located upon any lot that has a total square footage of less than nine hundred square feet. The minimum width of each home shall be twenty feet.

10. Subdivision: No lots may be partialled-out or subdivided.

11. Animals: Although lot owners may be permitted to have pets, no animals shall be used for propagation or procreation purposes. If pets or animals such as dogs disturb the peace and dignity of the neighborhood they will not be allowed.

12. Firearms: The discharge of firearms within the properties is prohibited. The term firearm includes a pellet gun.

13. Building Setback Requirements: No structure shall be located closer than forty feet from the lot line abutting the access road and no closer than forty feet from the lot line of a neighboring lot if said lot is owned by someone other than the builder or unless the lot owner acquires written consent from the board of directors.

14. No Building shall be erected without the design committees approval so as not to block the view of a neighbor.

15. No Garage: No garage can be constructed prior to main residence without consent from the board of directors.

### Article III NO LIABILITY

Review and approval of any building plan or application, whether that be to the developers, the board of directors, the homeowners association, the review design committee or any member, is made on the basis of aesthetic considerations only and no member, owner, developer or board member shall bare any responsibility of insuring the structural integrity or soundness of approved construction or modifications, nor insuring compliance with building codes, land use regulations or any other governmental regulations and requirements. Neither the developers, the association, the board of directors, any committee or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of construction or modifications to any building project.

### Article IV AMENDMENT/COMPLIANCE

1. Amendment: Prior to the conveyance of the first lot, declarants may unilaterally amend this declaration. After such conveyance, the declarants may unilaterally amend this declaration at any time and from time to time if such amendment is a) necessary to bring any provision hereof into compliance with the applicable governmental statutes, rule or regulation or judicial determination; b) necessary to enable any reputable title insurance company to issue title insurance coverage on the lots; c) required by an institutional or governmental lender or purchaser of mortgage loans, including for example the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the units; or d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots; provided, however any such amendment shall not adversely affect the title to any lot unless the owner shall consent thereto in writing.

2. Compliance: Every owner and occupant of any lot shall comply with all lawful provisions of this declaration, the by-laws and rules and regulations of the association. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief and for any other remedy available at law or in equity maintained by the association or in the proper case by an aggrieved lot owner or owners.

3. Notice of Sale or Transfer of Title. In the event that any owner desires to sell or otherwise transfer title to his or her lot, such owner shall give the board of directors at least seven days prior written notice of the name and address of the purchaser or purchasers, the date of such transfer of title and such other information as the board of directors may reasonably require. Until such written notice is received by the board of directors, the transferor shall continue to be jointly and severally responsible for all obligations of the owner of the lot hereunder including payment of assessments not withstanding the transfer of title to the lot.