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Dianna Longhenry, Recorder, Poweshiek County Iowa



REVISED AND SUBSTITUTED DECLARATION OF COVENANTS

Recorder's Cover Sheet

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Grantors:

Grantees:

Document or instrument number of associated documents previously recorded:

This Declaration Revises and Replaces the entire Declaration of Covenants, conditions, easements and restrictions recorded in Book 937 Page 535.

Prepared by and when recorded, return to: Randal B. Caldwell, Caldwell & Brierly, PLLC, 211 First Ave. W.,
Newton, Iowa 50208; Telephone: (641) 792-4160

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
SOUTH DIAMOND ADDITION**

This Declaration of Covenants, Conditions, Easements and Restrictions for SOUTH DIAMOND ADDITION, (the "Declaration"), is made this 18th day of November 2014, by the City of Montezuma, Iowa ("Declarant").

WHEREAS, Declarant is the Owner of SOUTH DIAMOND ADDITION (as defined in Section 1.02(j)); and

WHEREAS, Declarant desires to establish the covenants, conditions, easements and restrictions governing SOUTH DIAMOND ADDITION for the benefit of the Owners (as defined in Section 1.02(g)) of Lots (as defined in Section 1.02(f)) and of Units (as defined in Section 1.02(k)) in SOUTH DIAMOND ADDITION.

NOW, THEREFORE, Declarant hereby publishes and declares that SOUTH DIAMOND ADDITION shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of SOUTH DIAMOND ADDITION, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of SOUTH DIAMOND ADDITION, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

**ARTICLE I
INTENT; DEFINITIONS**

1.01 Intent. It is the intent of this Declaration to provide conditions, covenants, easements, restrictions, and reservations to ensure the proper use and appropriate development of improvements to each Lot in SOUTH DIAMOND ADDITION so that SOUTH DIAMOND ADDITION is developed as a harmonious and integrated development, and to protect the value and desirability of property within SOUTH DIAMOND ADDITION.

1.02 Definitions.

- (a) "City" shall mean the City of Montezuma, Poweshiek County, Iowa.
- (b) "Declarant" shall mean City of Montezuma, Iowa, and its successors and assigns as to the entirety of the undeveloped portion of SOUTH DIAMOND ADDITION that has not

theretofore been conveyed to home builders or home Owners unless the context indicates otherwise.

(c) **"Declarant Improvements"** shall mean those public streets and improvements Declarant is to construct as part of the platting as shown on the final plat of SOUTH DIAMOND ADDITION. Any Declarant Improvement that is dedicated and conveyed to the City shall cease to be a Declarant Improvement upon acceptance of the final plat by the City.

(d) **"Hereof" and "Herein"** shall refer to the entirety of this Declaration and not only to any particular part of this Declaration, unless the context clearly provides otherwise.

(e) **"Improvements"** shall mean and include a building, outbuildings, driveways, parking areas, sidewalks, swimming pools, tennis courts, fences, walls, hedges, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.

(f) **"Lot"** shall mean any platted Lot, tract, or portion thereof, or two or more contiguous Lots, tracts, or portions thereof in SOUTH DIAMOND ADDITION, including real estate subject to recorded easements, but shall not include any land deeded to the City.

(g) **"Owner"** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, as applicable, in SOUTH DIAMOND ADDITION, including sellers under executory contracts of sale, (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents), and the use of the singular shall include the plural.

(h) **"Occupant"** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot in SOUTH DIAMOND ADDITION.

(i) **"Single-Family Lot"** shall mean a Lot (other than an Association Lot) which is platted for the development, use and occupancy as a single-family home.

(j) **"SOUTH DIAMOND ADDITION"** shall mean the real estate described as

Lot C in the South One-Half of the Northwest Fractional Quarter of Section 7, Township 78 North, Range 14 West, of the Fifth Principal Meridian, Montezuma, Poweshiek County, Iowa, described as follows:

Commencing at the West Quarter Corner of Section 7, Township 78 North, Range 14 West, of the Fifth Principal Meridian; Thence N89°42'41" E, along the South Line of the South One-Half of the Fractional Northwest Quarter of said Section 7, a distance of 692.96 feet, to the Southwest Corner of Lot C in the South One-Half of the Fractional Northwest Quarter of said Section 7, and the Point of Beginning; Thence N00°10'40" W, along the West Line of said Lot C, a distance of 524.91 feet, to the Northwest Corner of said Lot C; Thence N89°38'05" E, along the North Line of said Lot C, a distance of 1105.75 feet, to the Northeast Corner of said Lot C;

Thence S31°02'50"E, along the Easterly Line of said Lot C, a distance of 566.01 feet, to the Southeast Corner of said Lot C, and a Point on the South Line of said South One-Half of the Fractional Quarter of said Section 7; Thence S89°42'41"W, along the South Line of said Lot C and South One-Half, a distance of 1420.04 feet, to the Point of Beginning. Said Lot C contains 15.24 Acres, and is subject to easements and restrictions of record.

together with all easements and servient estates appurtenant thereto, and subject to (1) zoning and other applicable building ordinances, (2) easements, covenants and restrictions of record.

(k) **"Unit"** shall mean a Single-Family Lot.

(l) **"Zoning Ordinance"** shall mean the zoning ordinances of the City of Montezuma, Iowa.

(m) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.

(n) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

ARTICLE II

GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots in SOUTH DIAMOND ADDITION shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

2.01 Uses.

(a) Single-Family Residences. Lots 1-21 shall be reserved for Single-Family Lots. The use of Single-Family Lots in SOUTH DIAMOND ADDITION shall be limited to Single-Family residential dwellings and shall be developed with not more than one single-family dwelling on each Single-Family Lot in the final applicable plat or replat and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use unless such uses or structures are otherwise regulated or prohibited by this Declaration. Construction on all Single-Family Lots must begin within twenty-four (24) months of purchase and closing from Declarant and must be completed within 36 months. In the event construction does not commence within said period, Declarant may, at its option, repurchase the applicable Single-Family Lot at 90% of the previous sales price.

(b) Multi-Family Residences. Lots 22-31 are limited to duplex or townhouse construction. Site plan for construction of these lots must be approved by the City prior to construction. Townhouses may be built over several lots but only with the permission of the City and approval of site plan. All other provisions of 2.01 apply to these lots except minimum duplex and townhouse size which shall be as follows:

All duplexes must have a minimum of 1100 square feet of finished area directly under one roof.

All townhouses must have a minimum of 1100 square feet of finished area directly under one roof for 2 story.

(c) If an Owner does not commence construction within six (6) months after the purchase of a Lot from Declarant, the Owner shall seed the Lot with grass and maintain it in accordance with Section 2.19.

(d) Business Activity. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a non-retail home occupation approved by the City and except that home builders may maintain model homes during construction.

2.02 Architectural Standards. The following architectural standards shall apply to the development of all Lots in SOUTH DIAMOND ADDITION:

(a) Character. No building or structure shall be constructed, altered or maintained upon any Single-Family Lot other than a detached single-family dwelling with an attached private garage and such other accessory structures thereto permitted by this Declaration. In order to preserve the general design for development of the Lots in SOUTH DIAMOND ADDITION as a fine residential subdivision of the City, no single-family dwelling of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors and location thereof shall have been first approved by Declarant for so long as Declarant owns any Lots in SOUTH DIAMOND ADDITION. Each dwelling must have an approved building permit and comply with all City codes and ordinances.

(b) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all four elevations of the structure. Siding shall not have a reveal of greater than 8". Exterior colors shall be earth tones, white, or soft, muted tones. Exterior materials may be pre-finished.

(c) Roof Materials. Roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, minimum twenty-five (25) year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall coordinate with the colors of the surfaces to which they are attached.

(d) Garages. All houses shall have, as a minimum, a one or two-car attached garage with a poured concrete floor. Each house shall provide off-street parking for two cars on paved surface with a poured concrete floor.

(e) Minimum Single-Family House Sizes. All single-family homes shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

(i) All one-story dwellings must have a minimum of 1,200 square feet of finished area directly under the roof.

- (ii) All one and one-half story dwellings must have a minimum total finished floor area of 1,400 square feet.
- (iii) All two-story dwellings must have a minimum total finished floor area of 1,600 square feet.
- (iv) All split-level, raised ranch, or split foyer dwellings must have a minimum of 1,400 square feet of finished area directly under the roof.

(f) Decks and Porches. Decks attached to a single-family dwelling must be built from cedar, redwood, treated lumber or other products approved by Declarant for so long as Declarant owns any Lots in SOUTH DIAMOND ADDITION. All wood steps to front entry porches shall have enclosed risers.

(g) Building Elevation and Drainage Standards. The finished grades for single-family homes constructed on each Lot shall be established to permit positive drainage away from such single-family homes.

2.03 Landscaping.

(a) Single-Family Lots. On each Single-Family Lot, the Owner at the time the dwelling is first occupied is required to plant, a minimum of one deciduous tree. Trees shall be a minimum of 2" caliper in diameter, 10' – 12' in height, and have a minimum spread of 4'. Street Trees and shall be planted in the front yard of the Single Family Lot, outside the public right-of-way, but within any street tree easement, if any, upon such Single-Family Lot, or if there is no street tree easement, as near to the right-of-way as possible and not within an easement area without the consent of the easement holder.

Within one hundred and eighty (180) days after completion of the single-family home upon a Single Family Lot, the front yard, side yards and the twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully seeded or sodded, and the remainder of the rear yard to the rear Lot line shall be seeded or sodded.

If weather conditions make the time elements of the requirements of this Section 2.03(a) impossible to fulfill, Declarant shall establish a reasonable period of time for compliance.

No offensive or hateful yard displays of any kind.

2.04 Fences And Hedges. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

(a) Walls, fences, or hedges along rear property lines and side property lines shall not exceed six (6) feet in height.

(b) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is a vinyl clad fence. All fences shall be kept in good repair and attractive appearance.

(c) No fences shall be built forward of the center line of the house built on a Lot, other than front yard decorative fence. All rear fences shall be either wood, decorative wrought iron, or vinyl clad chain link. All wood fences shall be natural in color, stained, or painted in soft, earth-tone colors so as to blend in with the terrain. Front yard decorative fences shall be either painted wood, metal, or vinyl, open "picket" type, and be a maximum of 42" high.

2.05 Driveways. No single-family home shall be constructed, altered, or maintained on any Lot unless it has a driveway from a street running to the single-family dwelling. All parking and driveway areas shall be hard surfaced, using a suitable thickness of poured concrete or asphalt installed in a manner suitable for vehicular traffic.

2.06 Sidewalks. Four-foot (4.0') wide public sidewalks are required within the public right-of-way along all public streets abutting Lots as provided by the Code. At the time a building is built upon a Lot, the Owner of the Lot shall be responsible for construction of the public sidewalk along the portion of public street frontage(s) abutting said Lot and within any sidewalk easement areas on such Lot according to City specifications. City shall have no obligation to a purchaser of a Lot to install sidewalks.

2.07 Garbage Cans and Equipment; Outside Storage. No trash receptacles, dumpsters, garbage cans or recycling bins shall be permitted to be located upon a Lot unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the day before collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. Firewood shall not be stored on the front or side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at least twenty feet (20.0') from any rear or side yard Lot line. No material may be permanently stored in the front yard or side yard of a house, and no material of any kind shall be stored in a rear yard unless appropriately covered or screened from view by neighbors.

2.08 Temporary Structures; Mobile Homes. There shall be no occupancy of temporary structures or partially completed structures, no home or other building shall be moved onto any Lot from outside SOUTH DIAMOND ADDITION, and no mobile homes or manufactured homes shall be permitted at any time.

2.09 Swimming Pools. Hot tubs and swimming pools are allowed provided that any hot tubs which are not below ground are skirted in wood or other materials approved, in writing, by Declarant, for so long as Declarant owns any Lots in SOUTH DIAMOND ADDITION. All swimming pools and hot tubs shall be located only in rear yards and shall be screened by a fence.

2.10 Satellite Dishes. Satellite dishes or parabolic devices in excess of 22" in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only.

2.11 Livestock and Poultry Prohibited. Property owner must comply with City Ordinance Chapter 55, Animal Protection and Control, or its successor ordinance.

2.12 Utilities and Utility Meters. All utilities are to be provided by the City and subject to City rules and regulations. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells or septic systems shall be permitted on any Lot.

2.13 Security Lighting. Security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion that will avoid direct lighting onto adjoining Units or Lots. Other than security lighting, no light poles are permitted on any Unit or Lot, except for decorative lights in the back yards for pool lighting.

2.14 Noxious Activities. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently. Owners must comply with all City ordinances in this regard. No livestock or poultry permitted.

2.15 Maintenance of Lot. Property Owners must comply with all City ordinances on weed control and lot maintenance.

2.16 Construction Clean Up and Maintenance. Each Owner shall confine all of its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks or trails or onto any other Lot in SOUTH DIAMOND ADDITION. Weekly clean up of trash and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Lot. Owners are responsible for their contractors or subcontractors. Such Owner shall promptly repair any such damage and restore all such facilities, other Lots and public streets to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Lots or public streets, and such failure continues for more than three (3) days after written notice from the Declarant in whose plat such Lot is located or the Association, then such Declarant or the Association shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Lot where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Lots of others or the public streets, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Poweshiek County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.17 Requirement and Limitations with Respect to Public Easements Located upon an Owners Lot. Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, surface water flowage areas and drainage ponds and related facilities and water mains are reserved as shown on the recorded plat of SOUTH DIAMOND ADDITION and recorded

easements, or any replat, of any portion thereof The Owner of any Lot in SOUTH DIAMOND ADDITION shall, at such Owner's expense, keep and preserve that portion of such easements within such Owner's property, at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or sidewalks located in said easement area, without the prior consent of the City or utility company or person or entity for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore, repair or replace such building, structure, growth or change in grade.

2.18 Signage. Signage within SOUTH DIAMOND ADDITION impacts the aesthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

(a) Declarant may erect SOUTH DIAMOND ADDITION project identification signage within the signage easements at the entrances into the development.

(b) In connection with the development of any plat within SOUTH DIAMOND ADDITION, Declarant, or any other developer of a particular plat may erect project signage, real estate signage, financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the developed within such plat; provided, however, all such signage, including, but not limited to, the size, location and materials, shall be subject to the written approval of Declarant.


(c) In connection with the construction of any residence or building upon any Lot in SOUTH DIAMOND ADDITION the Owner or person constructing such residence or building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such residence or building and the sale of such residence or sale or lease of such building; provided, however, none of the foregoing signs shall be larger than 30" wide by 24" high without the written approval of Declarant.

(d) Once a Unit is sold and occupied as a residential dwelling unit, signage on that Unit shall be limited to (i) address signage, (ii) Owner identification signs, (iii) signs advertising real estate for sale ("For Sale Signs"), (iv) signs for garage sales ("Garage Sale Signs"), (v) signs for special events (such as birthdays, graduations, or anniversaries, hereafter "Event Signs"), (vi) signs for political campaigns and public voting matters ("Political Signs"), and (vii) other signs approved in writing by Declarant. For Sale Signs shall only be displayed while the applicable single-family residence or town home is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall only be displayed one day before the sale or event, during the sale or event, and must be removed by the day following the sale or event. Political Signs shall only be displayed up to six weeks prior to date of the vote or election, the day of the vote or election, and must be removed by the day following the vote or election- Political Signs not related to an election shall only be displayed for a maximum of two weeks. Other signs permitted by Declarant shall only be

displayed for a maximum of two weeks. Other signs permitted by Declarant shall only be displayed for such time as authorized by Declarant or the Board, as applicable. All of the foregoing described signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. No hand-painted signs will be allowed. Except for address and Owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through window or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood.

(e) If the Owner of a Lot erects or permits a sign to be erected on the Owner's Lot in violation of these provisions, then, in addition to, and not in lieu of, any other remedy, the Declarant (for so long as the Declarant owns any Lot in SOUTH DIAMOND ADDITION), the Association or Owner of the applicable Lot within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and remove and dispose of the offending sign at the expense of the Owner of the applicable Lot where such sign is located, and shall have the right of action against the Owner of the applicable Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Poweshiek County, Iowa, until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

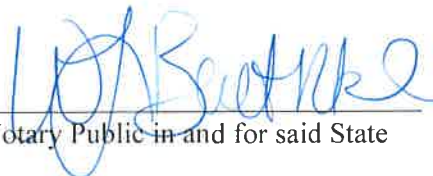
CITY OF MONTEZUMA, IOWA

By: 
James M. Hicks, Mayor

STATE OF IOWA, COUNTY OF POWESHIEK, SS:

On this 18th day of November, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared James M. Hicks, to me known to be the person who executed the foregoing instrument in behalf of City of Montezuma and acknowledged in execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.




Notary Public in and for said State