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Johnson County Iowa
Kim Painter County Recorder

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**PROTECTIVE COVENANTS AND RESTRICTIONS
OF SMIGEL SECOND ADDITION**

Recorder's Cover Sheet

Preparer Information: Timothy J. Krumm, 122 South Linn Street, Iowa City, IA 52240,
Phone: (319) 338-9222

Taxpayer Information: Hodge Construction Company, 711 S. Gilbert Street, Iowa City, IA
52240

Return Address: Timothy J. Krumm, 122 South Linn Street, Iowa City, IA 52240

Grantors: Hodge Construction Company

Grantees:

Legal Description: See Page 2

Document or instrument number if applicable:

Prepared by and after recording return to:

Timothy J. Krumm	122 South Linn Street	(319) 338-9222
Meardon, Sueppel & Downer P.L.C.	Iowa City, IA 52240	FAX (319) 338-7250

**PROTECTIVE COVENANTS AND RESTRICTIONS OF
SMIGEL SECOND ADDITION
NORTH LIBERTY, JOHNSON COUNTY, IOWA**

KNOW ALL MEN BY THESE PRESENTS:

That HODGE CONSTRUCTION COMPANY, an Iowa Corporation ("Hodge"), being the developer of the following described real estate (said real estate hereinafter being variously referred to as "lot," "lots" or "subdivision"), to wit:

Auditor's Parcel No. 2015006, North Liberty, Johnson County, Iowa, in accordance with the Plat thereof recorded in Plat Book 60, at Page 312, in the Records of the Johnson County Recorder's Office, containing 10.84 acres, and subject to easements and restrictions of record,

in order to establish and maintain the residential character of said real estate as heretofore described, does hereby covenant and agree with persons who may hereafter own lots or any one of several of the lots, or any right, title or interest therein of any nature whatsoever regardless of the nature by which such ownership or interest was acquired, that the use and sale of the lots is subject to the following restrictive covenants, all of which are to be construed as restrictive covenants, running with the title to such lots and with each and every portion thereof, to wit:

A. GENERAL RESTRICTIONS.

1. Except as noted herein, all of said lots shall be known, described and used solely as residential lots and no structure shall be erected on any residential lot other than one zero lot line laterally attached duplex dwelling. No improvement or structure, other than a first class zero lot line laterally attached duplex dwelling, garage, or patio may be erected, placed or maintained on any lot in such premises. No swimming pools of any type shall be erected or installed on the above said lots, unless approved in

writing by Hodge or its representative or designee. Temporary above-ground swimming pools having a diameter of eight (8) feet or less, commonly referred to as "kiddie pools," shall not be included within the foregoing prohibition and shall be allowed to remain on the above said lots during the months of May through September.

2. No zero lot line laterally attached duplex dwelling shall exceed two and a half stories in height, unless otherwise approved by Hodge.

3. Prior to any construction, two (2) sets of plans and specifications for the proposed structure shall be submitted to Hodge or its designee for approval. In addition to plans and specifications for structure, the applicant shall submit a site plan or other material showing the location and type of fences, parking areas, plantings and landscaping, including trees and light posts in the front yard, and other relevant matters, including the location on the lot of all proposed improvements, the materials to be used and the exterior color scheme proposed. The application shall also set forth a time schedule for construction of improvements, and in no event will an application be approved when the proposed construction will take longer than twelve months. Hodge or its designee shall approve or disapprove the application within a period of ten (10) business days after receipt of all of the above documents. Hodge or its designee shall have the right to refuse approval of any application for any reason which Hodge or its designee, in its sole discretion, may deem to be in the best interest of the subdivision. In the event any proposed construction is not commenced within one (1) year from the date said plans and specifications have been approved by Hodge, said approval shall lapse and it shall be the responsibility of the lot owner to reapply for approval prior to the commencement of construction.

4. No outside antennas or towers, other than one satellite dish not to exceed 18 inches in diameter located so as not to be visible from the street, may be installed, nor sheds, pet runs, or other outbuildings or structures of any kind may be erected on any of the lots with the subdivision. Fences are only allowed in the back yard of each dwelling, and may be no taller than five (5) feet, unless prior written approval of a different fence location or greater fence height is given by Hodge or its designee.

5. No activity shall be allowed which unduly interferes with the peaceful possession and residential use nor shall any unsightly accumulation of refuse be permitted on any lot within the subdivision.

6. No business other than a professional occupation operated solely by family members occupying the residence shall be conducted in any dwelling located in the subdivision. No noxious or offensive activity shall be carried on in the subdivision nor shall anything be done in the subdivision which may be or become an annoyance or nuisance to the neighborhood.

7. No outdoor pet facilities may be kept or maintained on any lot. Any pet making a disturbance on a regular basis which interrupts the tranquility and character of the neighborhood shall be considered a nuisance and be subject to removal pursuant to these restrictive covenants. No animals, livestock or poultry of any kind shall be kept, bred or maintained for sale or any commercial purposes. Any person owning or keeping a pet shall be responsible for and shall at all times clean up any waste or excrement from such pet. Said pet shall not be permitted to urinate or defecate on the lot of any other owner, and shall be on a leash when walked by the owner thereof.

8. No burning of refuse shall be permitted outside of any residence, except that the burning of leaves will be permitted as or if allowed by ordinance of the City of North Liberty from time to time.

9. No campers, boats, trailers, trucks, or other motor vehicles, or other recreational vehicles, shall be maintained, parked or kept more than 48 hours for any purpose on any lots or roadways within the subdivision, except within the enclosed garage. Further, no trucks, trailers, or commercial vehicles rated larger than a $\frac{3}{4}$ ton pickup shall be maintained or parked overnight for any purpose in the subdivision, except that the builder/developer shall be able to maintain or park such vehicles until such time as the subdivision is completed. No inoperable, dismantled, or wrecked motor vehicles, trailers, automobiles, or any other vehicles, or machinery or parts thereof, including scrap metals or other scrap materials shall be permitted to be upon or remain upon any lot or roadway within the subdivision. No personal property shall be stored or left upon a lot except within the garage located upon the lot. Garage doors shall be kept closed except during times of access to the garage.

10. No plants or seed or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a lot in the subdivision.

11. There shall be no more than one name plate on each residence. A name plate shall be no more than 200 square inches in area and contain the name of the occupant or the name and address of the residence. It may be located at the door of the residence or the wall adjacent to the door.

12. No above ground communication, electric or television lines or cable shall be permitted to be placed anywhere in the subdivision other than within the residences. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.

13. Hodge reserves the right to enter into agreements with the owner of any residence (without the consent of the owners of other residences within the subdivision), to deviate from any or all of the Covenants, provided there are practical

difficulties or particular hardships evidenced by the owner of any residence desiring such deviation, and any such deviation (which shall be confirmed in a written agreement) shall not constitute a waiver of the particular Covenant involved or any other Covenant as to the remaining property in the subdivision.

14. No mobile home, modular home, pre-manufactured, or log cabin home shall be constructed or located on any lot.

15. All leases shall comply with any and all rental, fire, housing and zoning codes of the City of North Liberty and the owner of the lot upon which the leased residence is located is required to make compliance with these covenants by the tenant a condition of the lease.

16. Any modification, remodeling, extension or expansion, including screen porches, decks, and storage facilities must have the approval of Hodge, its successor or assignee. The changes, additions, alterations or modifications must be approved by Hodge and must reasonably conform to the nature, character, style and structure of the units in the subdivision.

17. Each individual lot owner in the subdivision shall be entitled to reasonably landscape its lot in conformity with the general park-like landscaping of the subdivision. Hodge, its successor or assignee, shall have the right to review and approve or disapprove any landscaping which would materially affect the appearance and maintenance of the lawns within the subdivision. In the event an owner fails to properly maintain any landscaping situated upon the lot, Hodge shall have the right to enter upon the lot to remedy the situation and to thereafter assess the lot owner for any and all expenses incurred by Hodge in rectifying the situation.

18. Sump pump collection systems shall be provided if basements are installed in dwellings built within the subdivision.

19. No lot owner shall alter or permit or suffer to be altered the grade of their lot in any manner which has a material impact on the flow of surface water between and among the units.

B. ZERO LOT LINE PROTECTIVE COVENANTS AND RESTRICTIONS.

1. The wall dividing the two laterally joined dwelling units shall be a party wall and the owner of each dwelling unit shall have the right to use said wall jointly with the owner of the other dwelling unit as provided for by Iowa law.

2. All common aspects, including but not limited to utilities, water, sanitary sewer, easements, driveway, shall be party utilities and easements and each owner of a

dwelling unit shall have the right to use such common aspects, up to the point of their division, jointly with each owner of the adjoining dwelling.

3. Should the common wall or any common aspects, including but not limited to utilities, water, sanitary sewer, storm sewer, easements or driveway, be destroyed or damaged or require maintenance or repair for any reason, the owner of each dwelling unit shall be jointly and severally liable with the owner of the other dwelling unit for the costs reasonably necessary for replacement, maintenance and/or repair, except as may otherwise be set forth herein, provided that any sum received from joint insurance coverage shall first be applied to such replacements, maintenance and repairs. It is especially understood, however, that if replacement, maintenance and/or repairs are required because of the sole negligence of one of the owners of a dwelling unit or said owner's family or invitees, the cost thereof shall be at such owner's sole expense.

4. No owner of a dwelling unit shall in any way alter or change the common wall, interior decorations excepted, or any of the pipes, conduits, ducts, insulation or special components located therein without the written consent of the owner of the other dwelling unit.

5. Each owner of a dwelling unit shall be solely responsible for repairing and/or replacing the roof covering such dwelling unit. Each owner shall further be solely responsible for all replacement, maintenance and repairs of the interior and exterior of his or her dwelling unit, except as otherwise provided herein, and shall keep the exterior of his or her dwelling unit in good condition at all times. The following provisions shall govern exterior replacements, maintenance and repairs.

a. The owner of a dwelling unit may repair and replace exterior components of such dwelling unit with components similar to pre-existing components and of the same design and color, and may paint the exterior of such dwelling unit with paint of the existing color or colors, but such owner may not, either in the course of ordinary replacement, maintenance, repair and remodeling, or in restoration after damage or destruction, use different siding, roofing or other exterior components, or a different color scheme, unless the owner of the adjoining dwelling unit gives a written consent to do so.

b. In the event of any dispute arising between the owners of adjoining dwelling units concerning a change of siding, roofing materials, color scheme, or any other exterior components, each party shall choose one arbitrator and such arbitrators shall choose a third arbitrator, and the decision of the majority of all arbitrators shall be final and conclusive of the question involved and binding on all parties. The arbitrators' decision shall be based on whether the proposed siding, roofing material, color scheme or other changes are in harmony with the design of the adjoining dwelling

unit. If either party refuses or fails to appoint an arbitrator within ten (10) days of a written request to do so by the other party, such arbitrator may be appointed by any Judge of the District Court for Johnson County. Arbitration shall be in accordance with the rules of the American Arbitration Association and the costs thereof shall be shared equally by the parties.

6. The owner of each lot upon which a dwelling unit is located shall keep such lot free of weeds and debris and shall keep the lawn mowed and in good presentable condition.

7. If the common wall is damaged or destroyed by fire or other casualty or by physical deterioration, the owner of either dwelling unit may restore it and shall have an easement over the adjoining dwelling unit reasonably necessary for such restoration, and the owner of the adjoining dwelling unit shall contribute to the cost of restoration on an equal basis, without prejudice, however, to the right of any such owner to call for a larger contribution from the other owner under any rules of law regarding liability for negligent or willful acts or omissions.

8. If any existing portion of a dwelling unit or driveway encroaches upon an adjoining lot, or if any such encroachment shall hereafter arise because of settling or shifting of the building or other unintentional cause, there shall be deemed to be an easement in favor of the owner of the encroaching dwelling unit to the extent of such encroachment so long as the same shall exist.

9. Each owner of a dwelling unit agrees to indemnify and hold harmless the owner of the adjoining living unit from any mechanic's liens arising from work done or material supplied for repairs, replacements or improvements solely to their own dwelling unit or property.

10. In the event a dispute arises concerning any provision of these covenants and restrictions, each party shall choose one arbitrator and such arbitrators shall choose a third arbitrator, and the decision of the majority of all the arbitrators shall be final and conclusive of the questions presented and binding on all parties. If either party refuses or fails to appoint an arbitrator within ten (10) days of a written request to do so from the other party, such arbitrator may be appointed by any Judge of the Iowa District Court for Johnson County. Arbitration shall be in accordance with the rules of the American Arbitration Association and the cost thereof shall be shared equally by the parties.

C. MISCELLANEOUS.

1. Duration. Each of the Covenants shall continue and be binding for an initial period of twenty-one (21) years from the date of these Protective Covenants and Restrictions.

2. Running with the Land. The Covenants shall run with the land and bind owners, their successors, grantees and assigns, and all other parties claiming by, through or under them.

3. Remedies for Violation of Covenants. Hodge, their successors or assigns, and each owner or owners of any of the residences from time to time shall have the right jointly and separately, to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the Covenants in addition to the right to bring an ordinary legal action for damages. In no event shall the failure of any owner to enforce any of the Covenants as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation. The prevailing party in any such action shall be entitled to recover its costs, expenses and reasonable attorneys' fees from the other party.

4. Modification. The record owners in fee simple of the residences in the subdivision may revoke, modify, amend or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release the Real Estate from the Covenants, but only at the following time and in the following manner:

a. Any such change or changes may be made effective at any time from the date of recording of this Declaration if the record owners in fee simple of sixty-six percent (66%) of the lots in the subdivision consent to such change in writing.

b. Any such consents shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Johnson County, Iowa. A recordable certificate by an accredited abstractor, title guaranty company doing business in Johnson County, Iowa, or a Johnson County attorney, as to the record ownership of the Real Estate shall be deemed conclusive evidence with regard to compliance with the provisions of this section.

c. For so long as Hodge owns any Lot or any part of the property, Hodge may amend these Protective Covenants by an instrument in writing filed and recorded in the records of Johnson County, Iowa, without the approval of any owner of any lot or part of said real estate; provided, however, that such amendment shall not materially alter or change any owners' and/or occupants' right to the use and enjoyment of such owners' and/or occupants' lot or adversely affect the title to any lot or part of the real estate.

5. Subordination. All Covenants, liens and other provisions set forth herein shall be subject to and subordinate to all mortgages or deed of trust in the nature of a mortgage now or hereafter executed, encumbering any of the Real Estate; and none of the Covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure or sold under the foreclosure of any mortgage or under the provisions of any deed of trust in the nature of a mortgage, or any judicial sale, any purchaser at such sale, his, her or its grantees, heirs, personal representatives, successor or assigns shall hold any and all property so purchased or acquired subject to all of the Covenants, liens or other provisions of these Protective Covenants and Restrictions.

6. Invalidation. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenant or provision contained herein, such holding shall not impair, invalidate or otherwise affect the remainder of these Protective Covenants and Restrictions which shall run in full force and effect.

7. Notice. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any owner at his or her last known address, shall be sufficient prior notice to such owner wherever notices are required in these Protective Covenants and Restrictions.

8. NPDES/CSR Permits. The owner of any lot assumes, by acceptance of a Deed for the lot, Hodge's obligations with respect to such lot for: (i) soil erosion control on such lot from and after the delivery of the Deed; and (ii) installation of sidewalks or trails as required by the City of North Liberty, if not already installed by Hodge. Such owner shall cooperate with Hodge in obtaining a transfer of any soil erosion control NPDES, CSR or other governmental permit with respect to soil erosion, wetland and other environmental laws, to such owner or the cancellation or other termination of the permit currently in the name of Hodge or its affiliate, and the reissuance of a permit in the name of such owner. At any time required by Hodge, any party accepting a Deed for any lot or part thereof shall execute the appropriate documentation required by the Iowa Department of Natural Resources, the City of North Liberty, Iowa, or other governmental body to release Hodge from responsibility of executing a soil erosion plan (including monitoring and record keeping) as it applies to the lot for the period of time after the delivery of a Deed for such lot, and to release Hodge from any other obligation for environmental matters for the period of time after delivery of a Deed. Any party that accepts a Deed for any lot or part thereof who fails to cooperate with Hodge, fails to execute documentation to relieve Hodge from responsibility for soil erosion or fails to comply with the lawful requirements for control of soil erosion shall be obligated to hold Hodge harmless from all liability, costs and expense, including reasonable attorney fees, arising from such failure by such party.

IN WITNESS WHEREOF, the undersigned have set their hands to this Declaration on the day below written.

HODGE CONSTRUCTION
COMPANY

Dated 4/25/17

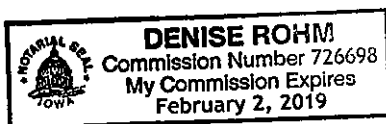
By [Signature]
Michael E. Hodge, President

Dated 4/25/17

By [Signature]
Kevin Digmann, Treasurer

STATE OF IOWA)
) ss:
JOHNSON COUNTY)

On this 25 day of April, 2017, before me, the undersigned, a Notary Public in and for said County and said State, personally appeared Michael E. Hodge, to me personally known, who, being by me duly sworn, did say that he is the President of the corporation executing the within and foregoing instrument; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Michael E. Hodge, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.



[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss:
JOHNSON COUNTY)

On this 25 day of April, 2017, before me, the undersigned, a Notary Public in and for said County and said State, personally appeared Kevin Digmann, to me personally known, who, being by me duly sworn, did say that he is the Treasurer of the corporation executing the within and foregoing instrument; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Kevin Digmann, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Denise Rohm
Notary Public in and for the State of Iowa

