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PROTECTIVE COVENANTS AND RESTRICTIONS FOR MWD DAVIS ADDITION

A PORTION OF WHICH MWD DAVIS ADDITION INCLUDES A RESUBDIVISION OF: 1) LOTS 13-17 OF REVISED R.H. DAVIS SUBDIVISION, JOHNSON COUNTY, IOWA, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 7, PAGE 1, OF THE RECORDS OF JOHSON COUNTY, IOWA (ALSO SOMETIMES REFERRED TO AS R. H. DAVIS SUBDIVISION OR R. H. DAVIS SUBDIVISION, PART 1); AND 2) A PORTION OF THE "STREET" (a/k/a OLDE OAK LANE) IN SAID REVISED R.H. DAVIS SUBDIVISION

Declarants: **James R. Davis and Barbara Davis, husband and wife**
Robert A. Davis and Patti Davis, husband and wife
Jan E. Smith and Eric Smith, wife and husband

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PROTECTIVE COVENANTS AND RESTRICTIONS FOR MWD DAVIS ADDITION, IOWA CITY, JOHNSON COUNTY, IOWA

James R. Davis, Robert A. Davis and Jan E. Smith, hereafter collectively referred to as the "**Declarants**" are the owners of certain real estate in Iowa City, Johnson County, Iowa known as Lots 1 – 14, inclusive, and Outlots A and B in MWD Davis Addition, according to the plat thereof recorded in Book 49, Page 322, of the plat records of Johnson County, Iowa.

Such Declarants, for the mutual benefit of those persons who now own or may subsequently acquire real estate in said subdivision, hereby impose the following Covenants and Restrictions on such numbered lots, which Covenants and Restrictions shall be binding upon all the present and future owners of such lots or portions thereof as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of land.

ARTICLE I - USE AND BUILDING RESTRICTIONS

The covenants and restrictions of this Article I are applicable only to Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, said lots hereafter referred to in this Article I as "Lots" and individually as "Lot".
(The covenants and restrictions of this Article I are not applicable to Lot 3 in MWD Davis Addition; provided however, the Owner(s) of Lot 3 shall have full rights to extend and/or enforce Paragraphs 19 through 23 of this Article I in accordance with the provisions of Paragraphs 3 and 4 of Article III.)

1. No building or structure of any kind, including signs or other forms of advertisement, shall be erected, placed or altered on any Lot until architectural plans and building specifications, site plans showing location of buildings and all other improvements, existing and proposed finished grades, location of trees 3" and over in diameter; and preliminary landscape designs (the "Submittals") have been approved in writing by Declarants or their designee. Primary consideration in granting or refusing such approval shall be given to quality of design, materials, harmony of external design with existing structures, and any other appropriate and reasonable considerations, with a view to the development of an attractive and convenient commercial area of integrated design and function. If Declarants or their designee do not act on applications made to them for approval within thirty (30) days after receiving the Submittals for a particular building project, such application shall be deemed approved.

2. The owners and lessees of retail stores or other business establishments on Lots shall keep their stores, buildings and other structures in good repair, and shall maintain the premises in a neat and attractive appearance in general.

3. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Lots by the owners or lessees thereof. No act

constituting a nuisance as defined under the provisions of Chapter 657, Code of Iowa, or the common law of Iowa shall be permitted and the restrictions pertaining to acts within a county in said Code chapter shall be applicable to this Subdivision.

4. The unenclosed portion of any Lot, including landscaping, walkways and automobile parking areas, shall be maintained in a neat, clean and attractive manner.

5. Construction of the exterior of any structure on a Lot must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or building due to strikes, fires, national emergency or natural calamities.

6. Each owner of a Lot on which a permanent structure has not been constructed and upon which no approved landscaping plan has been implemented, shall be responsible for mowing, removing, cutting, clearing or pruning unsightly growth which detracts from the overall beauty, setting and safety of the surrounding area, and further responsible for keeping the Lot free and clear of debris and trash. Declarants and their agents may enter upon any such Lot to perform any such functions without such entrance and removal being deemed a trespass, provided that the owner has failed to remedy the non-performance after receiving at least 30 days prior written notice from Declarants or their designee specifying such deficiencies. The Lot owner(s) shall reimburse the Declarants for any such work performed within 15 days after receipt of an itemized invoice for such work. The provisions of this paragraph permitting Declarants to remedy a violation shall not be construed to limit any other Lot owner from pursuing available remedies for such violation or as an obligation on the part of the Declarants to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

7. It shall be the responsibility of each Lot owner and lessee to prevent any unclean, unsightly or unkempt conditions of buildings or grounds on such Lot which shall tend to substantially decrease the attractiveness of the area as a whole or the specific area. If the Lot owner does not so maintain the Lot and any improvements thereon then after thirty (30) days written notice to the Lot owner and failure of the Lot owner to correct the defective condition during such 30 day period, the Declarants or their designee, at the Lot owner's expense, may enter upon the premises and correct the defective condition without being deemed a trespass. The provisions of this paragraph permitting the Declarants to remedy a violation shall not be construed to limit any other Lot owner from pursuing remedies for such violation or as an obligation on the part of the Declarants to correct any unclean, unsightly or unkempt conditions.

8. Each Lot owner or lessee shall provide sanitary receptacles for garbage in a screened area not generally visible from a public street and such facilities shall be kept in a clean and sanitary condition.

9. No structure of a temporary character, including mobile offices or living quarters shall be placed upon an Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during construction of any permanent structure, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or for any commercial uses or permitted to remain on the Lot after completion of construction, and provided further that this prohibition shall not apply to camping trailers and other recreational vehicles entering the property after the buildings are completed and open for business.

10. No fuel tanks or similar storage receptacles may be generally visible from a public street and may be installed only within a permanent structure or a screened area in full compliance with any applicable laws.

11. Each Lot owner or lessee must construct a screening fence to shield and hide from view any service yards or areas. Plans for such fence delineating the size, design, texture, appearance and location must be approved by the Declarants or their designee prior to construction in the same manner as set forth in Section 1 of Article I of this Declaration.

12. No Lot shall be subdivided, or its boundaries changed, except with the written consent of the Declarants or their designee. However, Declarants or their assignee of this right may replat any two (2) or more Lots intended for commercial use in order to create a modified site or sites and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as one or more commercial Lot sites to include, but not limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of said replatted lots. The restrictions and covenants herein shall apply to each replatted Lot that may be so created.

13. All pitched roofs shall be either metal with standing seams or shingled with materials at least of the quality of Certainteed Landmark 30. All fascia and soffit coverings shall have specifications of at least the quality of prefinished Rollex aluminum.

14. Exterior surfaces of the buildings facing public streets shall be constructed only of brick, stone, architectural masonry or colored stucco. Sides of buildings not facing public streets may be of any such materials or architectural metals. The Declarants or their designee may approve in writing other limited maintenance type surfaces. No siding of vinyl, wood, hardboard, stucco or other siding that requires painting shall be used on any exterior surface of a building. T-1-11 inverted bat or board and batten siding is not permitted. Other materials may be approved in writing by the Declarants or their designee.

15. Lot owners shall, upon purchasing a Lot, assume the obligation to install (if not already installed), maintain, repair and replace sidewalks in accordance with the Subdivider's Agreement entered into in connection with the Final Plat of MWD Davis Addition and in compliance with the specifications of the City of Iowa City.

16. During the course of any construction on a Lot, the building contractors and Lot owner shall keep mud, dirt, debris and building materials off of all streets and other Lots.

17. The owner of any building damaged by fire or act of God shall within ninety (90) days thereof, commence restoration or reconstruction of said dwelling, and work shall be completed within one (1) year from the date of destruction.

18. The Declarants or their designee may in writing waive or consent to variances in any of the preceding building covenants and restrictions to prevent hardship to or unintended results for any Lot owner.

19. No building constructed on Lots 8, 9 10 or 11 shall exceed two (2) stories with a maximum building height of forty feet (40') (including HVAC units and screening as well as satellite dishes and antennas); and no building constructed on Lots 12, 13 or 14 shall exceed one

story in height with a maximum building height of thirty feet (30') (including HVAC units and screening as well as satellite dishes and antennas).

20. No building constructed on Lots 8, 9, 10, 11, or 12 shall have a linear dimension of more than fifty percent (50%) of the length of such Lot's frontage along I-380/U.S. 218; no building constructed on Lot 13 shall have a linear dimension of more than fifty percent (50%) of the length of such Lot's combined frontage along I-380/U.S. 218 and Iowa Highway 1. No building constructed on Lot 14 shall have a linear dimension of more than fifty percent (50%) of the length of such Lot's frontage along Iowa Highway 1.

21. No building on a Lots 8, 9, 10 or 11 shall have a Floor Area Ratio ("FAR") of the ground floor in excess of twenty percent (20%) of total lot size; and no building on Lots 12, 13 and 14 shall have a FAR of the ground floor in excess of fifteen percent (15%) of total lot size.

22. The Declarants or their designee may in writing waive or consent to variances in any of the building covenants and restrictions specified in paragraphs 19, 20, 21 and 22 only with the written consent of the then owner of Lot 3 in MWD Davis Addition.

23. **USE RESTRICTIONS**. No Lot subject to this Article I Lots shall at any time be used for the operation of a business from a building in excess of 25,000 square feet for any business either i) specializing in home improvements (e.g. paint store, flooring store, hardware store, etc.) or ii) operated as a home center business similar to Purchaser's business, including, for example, a Home Depot, Lowe's or Sears Hardware.

24. These Covenants are intended to be in addition to and not in lieu of applicable governmental regulations. To the extent that any applicable governmental regulation is more restrictive or onerous than any provision of these covenants, then the governmental regulation shall take precedence. To the extent that any of provision of these covenants is more restrictive or onerous than any applicable governmental regulation, then these covenants shall take precedence.

ARTICLE II - OWNERS ASSOCIATION

This Article II is applicable to all Numbered Lots in MWD Davis Addition including Lots 1 through 14 inclusive.

1. These definitions shall apply only to this Article II.

1.1 "Association" shall mean and refer to MWD Davis Addition Owners Association, an incorporated association of Lot Owners, subject to its Articles of Incorporation and By-laws.

1.2 "Lot Owner" shall mean and refer to 1) the record owner(s) of a fee simple title or 2) a contract vendee(s), whether one or more persons or entities, of a Lot as defined in Section 1.3, but excluding those having such interest merely as security for the performance of any obligation, such as a mortgagee. "Lot Owners" shall mean more than one Lot Owner.

1.3 "Lots" shall mean all numbered lots (excluding outlots) in MWD Davis Addition, Iowa City, Iowa, according to the recorded plat thereof. "Lot" shall refer to one of such Lots.

1.4 "Developer" shall mean and refer to Declarants and their assigns, and when not otherwise specifically stated shall also include its designee(s).

1.5 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

1.6 "Common Area" shall mean 1) Outlot "A" and any wetlands, wetland buffers, landscape easement areas, landscaping, storm water management easement areas and stormwater detention basin located thereon and all, pipes, inlets, outlets, grates and other improvements (hereafter "facilities") related thereto that are or may be put in use to comply with the City of Iowa City's and/or the U.S. Army Corps of Engineer's wetland, wetland buffer, landscaping, storm water management, and/or storm water detention requirements for the Lots, and 2) Outlot "B" and any open space, wetlands, wetland buffers and/or mitigated wetlands and facilities and landscaping located thereon that are or may be put in use to comply with the City of Iowa City's and/or the U.S. Army Corps of Engineer's open space, wetland, wetland buffer and/or wetland mitigation requirements for the Lots.

2. Every Lot Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3. The Lot Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. When any action is required to be taken by the Association herein, it shall be taken by the Board of Directors acting for the Association.

4. When more than one person and/or entity holds an interest in any Lot, all such persons and/or entities shall be members. The vote for such Lot shall be exercised as such members among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

5. The Association's sole responsibility shall be for holding the Common Area (after conveyance from the Declarants) and for the repair, maintenance, replacement, preservation, and mitigation plan compliance (hereafter "maintenance") of the Common Area in compliance with all applicable governmental requirements and otherwise consistent with good stewardship for 1) the storm water easement area, storm water management facilities, landscape easement area, landscaping, wetlands and wetland buffers located on Outlot "A" and 2) any open space, landscaping, wetlands, wetland buffers and mitigated wetlands on Outlot "B".

6. In the event the need for maintenance of any portion of the Common Area is caused through the willful or negligent act of a Lot Owner or such Owner's representatives, guests or invitees, as determined by the Board of Directors, the cost of such maintenance shall be paid for by such Lot Owner or shall be added to and become an assessment against such Owner's Lot.

7. The Association may purchase a master comprehensive liability insurance policy to cover risks from its ownership and maintenance responsibilities hereunder in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive

liability insurance policy shall cover the Association, its Board of Directors, any committee or other working group of the Association members or Board of Directors, all persons acting or who may come to act as employees, agents or representatives of any of the foregoing, all Lot Owners and all other persons entitled to occupy any Lot. The Association shall also obtain any other insurance required by law to be maintained and may obtain such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate.

8. The Declarants, for each of the Lots, hereby covenants and each successor Lot Owner by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association 1) periodic assessments for routine maintenance of the Common Area and operation of the Association; and 2) special assessments for special maintenance of the Common Area and/or Association operating deficits, as the same may be established in accordance with these covenants and the Association's By-Laws. The periodic and special assessments, together with interest, costs and reasonable attorney's fees required for collection of past due assessments shall be a charge on the Lots and shall be a continuing lien upon each Lot against which such assessments are made until paid. Each such assessment against a particular lot, together with interest, costs, and reasonable attorney's fees that may become due, shall also be a personal obligation of the Lot Owner(s) of such Lot. The personal obligation for delinquent assessments shall not pass to any successors in title unless expressly assumed by such successor, but the lien therefore shall remain until foreclosed or released.

9. The assessments levied by the Association shall be used for expenses of ownership of the Common Area, for maintenance of the Common Area and for the operating expenses of the Association. Both periodic assessments and special assessments must be fixed at a uniform rate for all Lots based upon the relative square feet of each Lot to the total square footage of all such Lots. Assessments may be collected, as determined by the Board of Directors of the Association, on a monthly or less frequent basis.

10. The periodic assessment shall be set annually by the Board. In addition to periodic assessments, the Association may from time to time levy a special assessment for the purpose of defraying, in whole or in part, the cost of special maintenance, or to cover operating deficits from prior or current periods. Adjustments to the periodic assessments shall commence on all Lots on the first day of the month following the Board of Directors approving such an adjustment or at such other later time as the Board of Directors may adopt when setting the adjustment. Written notice of a special assessment shall be sent by the Board to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

11. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A certificate from the Association, properly executed by any officer, regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

12. If an assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum; and the Association may bring an action at law against the Lot Owner(s) personally obligated to pay the same or to foreclose the lien against the Lot, or both, and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action.

13. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his/her/its Lot.

14. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer, but shall not extinguish the personal obligation of the Lot Owner.

15. Notwithstanding the foregoing provisions of this Article II:

A. The Association shall have no obligation for maintenance of the Common Area until such time as title to the real estate containing the Common Area shall be conveyed to the Association. Until such conveyance, the Developer shall maintain the Common Area.

B. The Developer shall be solely responsible for 1) the initial grading, facilities installation and ground cover for the stormwater management easement area and facilities and 2) obtaining approval of the wetlands mitigation plan and the initial relocation of wetlands according to such plan, and shall not convey the Common Area to the Association until such time as such items have been fully completed.

C. The Declarants reserve the right to convey Outlot "A" and Outlot "B" to the Association at separate times or at the same time. Once conveyance is made, the assessments for the Common Area and maintenance of either one or both lots shall be allocated as provided herein only among the Lots for which an occupancy permit has been issued provided, however, any Lot Owner shall be solely responsible for any damage, beyond reasonable wear and tear, that such owner or its agents may cause to the Common Area or any portion thereof during the course of ownership before construction and/or during the course of construction of improvements on such Lot Owner's specific Lot(s).

D. The Declarants reserve the right to not to convey all or portions of Outlot "B" to the Association but to instead retain or convey to one or more other parties all or part of such outlot provided that such Outlot and its owner(s) shall at all times hold Outlot B in full compliance with any and all applicable governmental requirements for open space, landscaping, wetland areas, wetland buffering and mitigated wetlands that may have been required in connection with the platting of MWD Davis Addition.

ARTICLE III - GENERAL COVENANTS

1. The restrictive covenants contained in Paragraphs 1 through 16 of Article I shall not be binding upon any Lot in MWD Davis Addition so long as title thereto remains in the Declarants or their personal representatives, heirs, or beneficiaries, or in a development entity controlled by them.

2. Any approval, waiver, consent or other action required or permitted of the Declarants under the terms of these restrictive covenants may be exercised by such person(s), firm(s) or corporation(s) as the Declarants may designate in writing or assign their rights hereunder.

3. These covenants are to run with the land and shall be binding on the Declarants and all persons claiming by, through or under them for twenty-one (21) years after recording, at which time said covenants shall expire unless any then affected owner, under the provisions of Section 614.24, Code of Iowa, files a claim in the manner set forth in Section 614.25, Code of Iowa or any successor provision. For the purposes of such extension, Article I and Article II of these covenants shall be treated separately, thereby permitting the Owners affected by Article I or Article II, respectively, to file the necessary claim to extend Article I or Article II only as such Article or Articles may be applicable to such Owner's real estate or as otherwise permitted herein. These Covenants may be extended in any other manner permitted by law. Notwithstanding an expiration of the covenants, the provisions of Article II shall remain applicable so long as the Association referred to thereunder remains in existence to maintain the Common Area. The Covenants may be amended at any time by a vote of Lot Owners holding at least 75% of the square footage of the numbered lots in the Subdivision, which amendment shall become effective upon its recording in the records of Johnson County, Iowa, provided that Paragraphs 19 through 23 of Article I may not be amended without the consent of the then owner(s) of Lot 3 of MWD Davis Addition.

4. If any owner of a Lot subject to these covenants violates or attempts to violate any of the applicable covenants or restrictions herein during their existence, any other owner subject to the same covenant or restriction (and the owner of Lot 3 in regard to Paragraphs 19 through 23 of Article I) shall have the right to prosecute any proceedings at law or in equity against the owner violating or attempting to violate any such covenants or restrictions to prevent said owner from so doing and/or obtain other equitable relief, damages and/or other remedies for such violation. The Association shall have the same rights to enforce in connection with any violation or attempted violation of Article I and/or Article II. The prevailing party in any action to enforce these covenants, in addition to any other relief or remedy obtained, shall be awarded reasonable attorney fees and costs for such action.

Dated this 30th day of November, 2005.

DECLARANTS

OWNERS OF ALL OF THE NUMBERED LOTS IN MWD DAVIS ADDITION

James R. Davis

Barbara Davis, Spouse

Robert A. Davis

Patti Davis, Spouse

(See Page 9-A)
Jan Ellen Smith

(See Page 9-B)
Eric Smith, Spouse