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Page 1 of 6

**RETURN TO:**

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City of Urbandale  
Box 3450 - 3315 70th St.  
Urbandale, IA 50322

  
Doc ID: 011842340006 Type: GEN  
Recorded: 08/20/2002 at 08:31:38 AM  
Fee Amt: \$31.00 Page 1 of 6  
Polk County Iowa  
TIMOTHY J. BRIEN RECORDER  
File# 2002-00017778  
BK 9282 PG 499-504

Prepared by: Jerry C. Sharpe, 666 Walnut, 2000 Financial Center, Des Moines, IA 50309-3989, 515-243-7100

EASEMENT FOR PUBLIC PEDESTRIANWAY

KNOW ALL PERSONS BY THESE PRESENTS:

That CHARLES I. COLBY, JR., CLARK A. COLBY, R. EDITH CLAIBORNE AND CAROL L. CLARKE, AS TRUSTEES OF THE CHARLES I. COLBY AND RUTH COLBY INVESTMENT TRUST, NICHOLAS STREET PARTNERS(IOWA), LLC, AND THE RESERVE, a nonprofit corporation (hereinafter called "Grantor") in consideration of the sum of One Dollar (\$1.00) to be paid by the City of Urbandale, the receipt of which is hereby acknowledged by the Grantor, do hereby sell, grant, and convey unto the CITY OF URBANDALE, IOWA, a municipal corporation, (hereinafter called "City"), a perpetual Public Easement for bicyclists and pedestrians over, through and across the following described real estate:

See Exhibit A attached hereto

(hereinafter called "Easement Area") for the purposes of the City constructing, reconstructing, repairing, enlarging and maintaining an artificial surface for pedestrians and bicyclists within the easement, area, together with the full right of the City of Urbandale and the public, subject to the state laws and City Ordinances, to use said easement area for ingress and egress.

This Easement shall be subject to the following terms and conditions:

1. ERECTION OF STRUCTURES PROHIBITED. Grantor shall not erect any structure, building or fence over or with within the Easement Area.
2. OBSTRUCTIONS PROHIBITED. Grantor shall not erect or cause to be placed in the Easement Area any structure, material, device, thing or matter, or plant or permit to grow any hedge or other vegetative growth which could obstruct, impede, or otherwise interfere with the usage of the Easement Area by pedestrians or bicycles.
3. MAINTENANCE OF EASEMENT. The owner or occupant of the Lot shall keep and preserve that portion of the easement within his property in good repair and condition at all times, and shall not plant or permit to grow any trees or other vegetative growth which might reasonable be expected to obstruct or impair usage of the Easement Area.
4. CHANGE OF GRADE PROHIBITED. Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer.
5. RIGHT OF ACCESS. City and the public shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to remove any unauthorized obstructions or structures placed or erected on the

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Easement Area as herein described, including, but not limited to, the right to remove any unauthorized obstructions or structures placed or erected on the Easement Area and the right to improve, repair, and maintain the Easement Area in whatever manner necessary to protect the public health, safety, and general welfare.

- 6. EASEMENT RUNS WITH LAND. This Easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.
- 7. PROPERTY TO BE RESTORED. Upon completion of any construction, reconstruction, repair, enlargement or maintenance on any pedestrianway, the City shall restore the Easement Area in good and workmanlike manner, including restoration of lawns by sodding or seeding.

Grantor does HEREBY COVENANT with the City that Nicholas Street Partners(Iowa) LLC, and The Reserve, as to the part of Lot 7 included in the Easement Area, and the Trustees of the Charles I. Colby and Ruth Colby Investment Trust, as to the part of Lot 6 included in the Easement Area, hold said real estate described in this Easement by title in fee simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to WARRANT AND DEFEND the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 20 day of June, 2002.

(Grantor)  
CHARLES I. COLBY AND RUTH  
COLBY INVESTMENT TRUST

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By *Charles I. Colby, Jr.*  
Charles I. Colby, Jr., Trustee

By *Clark A. Colby*  
Clark A. Colby, Trustee

By *R. Edith Claiborne*  
R. Edith Claiborne, Trustee

By *Carol L. Clarke*  
Carol L. Clarke, Trustee

STATE OF IOWA, COUNTY OF POLK, ss

On this 20 day of June, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Charles I. Colby, Jr., Clark A. Colby, R. Edith Claiborne and Carol L. Clarke, as Trustees of the Charles I. Colby and Ruth Colby Investment Trust, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that those persons, as the fiduciaries, executed the instrument as the voluntary act and deed of those persons and of the fiduciaries.

Linda D. Clark  
Notary Public in and for the State of Iowa

My commission expires 4-12-2004



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EXHIBIT "A"

PEDESTRIAN PATHWAY EASEMENT:

A 15.00 FEET WIDE PEDESTRIAN PATHWAY EASEMENT OVER AND ACROSS A PORTION OF LOT 6 IN COLBY WOODS WEST PLAT No. 7, AN OFFICIAL PLAT, URBANDALE. POLK COUNTY, IOWA DESCRIBED AS FOLLOWS: THE SOUTHERLY 15.00 FEET OF SAID LOT 6 EXCEPT THE EAST 80.00 FEET THEREOF.

PEDESTRIAN PATHWAY EASEMENT:

AN IRREGULAR SHAPED PEDESTRIAN PATHWAY EASEMENT OVER AND ACROSS A PORTION OF LOT 7 IN COLBY WOODS WEST PLAT No. 7, AN OFFICIAL PLAT, URBANDALE. POLK COUNTY, IOWA DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 7; THENCE N90°00'00"E ALONG THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 244.56 FEET; THENCE N54°00'20"E ALONG THE NORTHERLY LINE OF SAID LOT 7, A DISTANCE OF 165.80 FEET; THENCE S88°34'39"E ALONG THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 147.90 FEET TO THE EASTERLY LINE OF A 30.00 FEET WIDE SANITARY SEWER EASEMENT OVER AND ACROSS A PORTION OF SAID LOT 7; THENCE S18°07'08"E ALONG THE EASTERLY LINE OF SAID SANITARY SEWER EASEMENT, A DISTANCE OF 63.00 FEET; THENCE S61°09'46"E, A DISTANCE OF 66.45 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 7, SAID POINT BEING 90.30 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 7; THENCE S06°24'08"W ALONG THE EASTERLY LINE OF SAID LOT 7, A DISTANCE OF 40.00 FEET; THENCE N60°53'17"W, A DISTANCE OF 86.53 FEET; THENCE N36°12'04"W, A DISTANCE OF 94.22 FEET TO A POINT THAT IS 15.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 7; THENCE N88°34'39"W ALONG A LINE PARALLEL WITH AND 15.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 85.28 FEET; THENCE S54°00'20"W ALONG A LINE PARALLEL WITH AND 15.00 FEET SOUTHEASTERLY OF THE NORTHERLY LINE OF SAID LOT 7, A DISTANCE OF 165.59 FEET; THENCE S90°00'00"W ALONG A LINE PARALLEL WITH AND 15.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 249.43 FEET TO THE WEST LINE OF SAID LOT 7; THENCE N00°02'45"E ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

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