

NO 00413 ✓	# Pages 9
Paged _____	Doc Tax _____
General _____	P&M \$6.50
Indexed _____	General \$51.50
Total Fees Pd \$58.00	
Submitted Electronically by: Chicago Title Insurance - Commercial	

00413

THE STATE OF NEBRASKA }
MADISON COUNTY } SS

This instrument filed for record
the 27 day of January 2017
at 01:35 PM and recorded in
Book 2017 Page 00413

Nancy J. Elton

Register of Deeds

**Prepared by and when recorded
return to:**

Andrew B. Zarda
Duggan, Shadwick, Doerr & Kurlbaum LLC
11040 Oakmont Street
Overland Park, KS 66210

COVENANTS AND RESTRICTIONS AGREEMENT

THIS COVENANTS AND RESTRICTIONS AGREEMENT (the "Agreement") is made this 27 day of January 2017, by and between Colby 2016, LLC, a Kansas limited liability company (hereinafter referred to as "Grantee") whose address is 13356 Metcalf Avenue, Overland Park, Kansas 66213, and Mary J. Tiedgen, a single person (hereinafter referred to as "Grantor") whose address is 84281 549th Ave., Norfolk, Nebraska 68701.

WITNESSETH:

WHEREAS, Grantee is the owner of that certain tract or parcel of land lying and being in **Madison County, Nebraska**, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Grantee Tract") and shown on the site plan attached hereto as Exhibit "C" ("Site Plan"); and

WHEREAS, Grantor is the owner of that certain tract or parcel of land contiguous to the Grantee Tract and lying and being in **Madison County, Nebraska**, and being more particularly described on Exhibit "B" attached hereto and made a part hereof by this reference and shown on the Site Plan (hereinafter referred to as the "Grantor Tract"; the Grantee Tract and the Grantor Tract each being herein sometimes referred to individually as a "Tract" and collectively as the "Tracts"); and

WHEREAS, Grantee and Grantor desire to establish certain rights benefiting and burdening Tracts, as hereinafter provided.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good

Chicago Title Company, LI

and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, Grantee and Grantor do hereby covenant and agree as follows:

1. Benefited Parties/Binding Effect. The rights and obligations established in this Agreement shall run with the land and be for the benefit of the Tracts and shall run with the land and be binding upon the Tracts. The owners of the Tracts may delegate the right to use and maintain the rights granted herein to their respective tenants, customers, invitees, employees, agents, contractors and licensees, successors and assigns.

2. Restrictions on Grantor Tract. Grantor covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of the Grantor Tract for the purpose of conducting business as or for use as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Express, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, Wal-Mart, Wal-Mart Supercenter, Wal-Mart Neighborhood Market or any other Wal-Mart concept.

3. Use Restrictions on Grantee Tract and Grantor Tract. Each of Grantee and Grantor covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of its Tract to be used or operated for any of the following: (a) for any unlawful purpose or in any way which would constitute a legal nuisance to an adjoining owner or occupant; (b) as a discotheque, dance hall or night club; (c) as a massage parlor; (d) funeral parlor; (e) bingo parlor; (f) any use which emits a strong, unusual, offensive or obnoxious odor, fumes, dust or vapors, or any sound which can be heard outside of any buildings on the Grantor Tract or Grantee Tract, except that any usual paging system be allowed; (g) any assembling, manufacturing, distilling, refining, smelting, or mining operation; (h) any "second hand" store or liquidation outlet; (i) any mobile home park, trailer court, labor camp, junk yard, recycling facility or stock yard; (j) any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (k) any dry cleaners performing on-site cleaning services; (l) any animal raising facilities (except this provision shall not prohibit pet shops and shall not prohibit the provision of veterinary services in connection with pet shops or pet supplies business); (m) any establishment selling or exhibiting paraphernalia for use with illicit drugs, and establishment selling or exhibiting materials or devices which are adjudicated to be pornographic by a court of competent jurisdiction, and any adult bookstore, adult video store or adult movie theater; (n) any bar or tavern; provided, however, a bar within a restaurant shall be permitted; (o) any pool or billiard hall, gun range or shooting gallery, or amusement or video arcade; and (p) any use which creates fire, explosives or other hazards.

4. Manner of Performing Work. Whenever a party shall perform any construction, maintenance, repairs or replacements on its Tract or as otherwise permitted herein, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. Such work shall be carried out in such manner so as to cause the least amount of disruption to any business operations being conducted on the surrounding land as is reasonably practicable.

5. Extent of Liability. Notwithstanding any other provision contained in this Agreement to the contrary, Grantee and Grantor hereby expressly agree that the obligations and liability of each of them shall be limited solely to such party's interest in its respective Tract, as such interest is constituted from time to time. Grantee and Grantor agree that any claim against a party hereto shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its Tract, as such interest is constituted from time to time. Nothing contained in this paragraph shall limit or affect any right that any party might otherwise have to seek or to obtain injunctive relief or to specifically enforce the rights and agreements herein set forth, provided that such injunctive relief or specific performance does not involve the payment of money from a source other than such party's interest in its Tract, as such interest may be constituted from time to time.

6. Duration. The provisions of this Agreement shall run with and bind the land described herein and shall be and remain in effect until the earlier of (i) the date which is thirty (30) years after the date of this Agreement, or (ii) the date the Grantee Tract is no longer leased or occupied by Dollar General or an affiliate or assignee thereof or otherwise operated as a discount retail store.

7. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Nebraska. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers. No party hereto shall be obligated to take any action to enforce the terms of this Agreement or to exercise any right, power, privilege or remedy granted, created, conferred or established hereunder. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns, and only with the prior written consent of Dollar General Corporation, so long as it, its successors, assigns or assignees is occupying the property. Time is of the essence of this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, Grantee and Grantor have set their hands and seals as of the day, month and year first above written.

Grantee:

Colby 2016, LLC,
A Kansas limited liability company

By: _____
Name: Tyler S. Oliver
Title: Member
Tyler S. Oliver

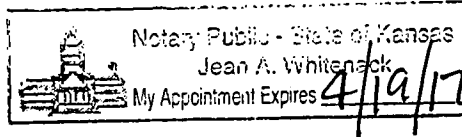
STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

On this 17th day of January, 2017, before me appeared Tyler Oliver, to me personally known, who, being by me duly sworn, did say that s/he is the Member of Colby 2016, LLC, a Kansas limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and s/he acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Jean Whitnack
Notary Public
Print Name: Jean Whitnack
Jean Whitnack

My Commission Expires:
4/19/17



Grantor:

Mary J. Tiedgen
Mary J. Tiedgen

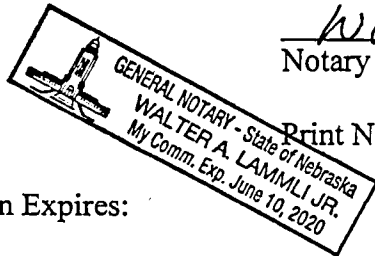
STATE OF NE)
)ss.
COUNTY OF MADISON)

On this 23 day of January, 2017, before me appeared **Mary J. Tiedgen**, personally known to me to be the person who executed the foregoing instruments in writing and being first duly sworn, acknowledged the execution of the same as a voluntary act for the uses and purposes therein set forth with full knowledge of its content and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Walter A. Lamml Jr.
Notary Public

Print Name: Walter A. Lamml Jr.



My Commission Expires:

EXHIBIT "A"

Legal Description of Grantee Tract

A Tract of land within Lot 6 of Fielden J. Hale's Suburban Lots to the Village of Battle Creek, Madison County, Nebraska, in the Southwest Quarter of Section 31, Township 24 North, Range 2 West of the 6th Principal Meridian, Madison County, Nebraska, more particularly described as: Commencing at the West quarter corner of Section 31, Township 24 North, Range 2 West of the 6th Principal Meridian, Madison County, Nebraska; Thence S01°08'06"E along the West line of the Southwest Quarter of said Section 31 a distance of 660.91'; thence N89°09'56" a distance of 72.28' to a point on the East right of way line of State Highway No. 121 being the Point of Beginning; thence N89°09'56"E along the North property line a distance of 240.00'; thence S00°50'04"E along the East property line a distance of 180.00'; thence S44°14'24"W along the East property line a distance of 148.00'; thence N51°49'43"W along the South property line a distance of 174.00' to a point on the East right of way line of State Highway No. 121; thence N0024850'04"W along the East right of way line of State Highway No. 121 a distance of 175.00' to the Point of Beginning.

EXHIBIT "B"

Legal Description of Grantor Tract

A tract of land lying wholly in Lots 2 thru 6 of Fielden J. Hale's Suburban Lots to the Village of Battle Creek, Nebraska in the Southwest Quarter of Section 31, Township 24 North, Range 2 West of the 6th P.M., Madison County, Nebraska and more particularly described as: Commencing at the Northwest corner of said Southwest Quarter, thence South 89 degrees 29 minutes 40 seconds East, along the North line of said quarter, a distance of 73.00 feet to the Point of beginning; thence continuing along the said North line of said quarter, on the previously described course, a distance of 1450.19 feet to the Northeast corner of Lot 2, of Fielden J. Hale's Suburban Lots to the Village of Battle Creek, filed for record, April 24th, 1905, thence South 00 degrees 15 minutes 21 seconds East, a distance of 1683.00 feet, to the Southeast corner of said Lot 2; thence North 89 degrees 29' minutes 40 seconds West, along the Southerly lines of Lots 2 and 3, of said subdivision, a distance of 507.45 feet, to the most Easterly corner of a tract of land deeded to the Village of Battle Creek; thence North 47 degrees 47 minutes 41 seconds West, 633.03 feet; thence South 53 degrees 42 minutes 20 seconds West, 116.90 feet; thence South 53 degrees 48 minutes 20 seconds West, 139.0 feet, to the most Westerly corner of said tract thence Northwesterly along a creek, to a point on the Easterly line of a Highway Right- of-Way; thence North 00 degrees 17 minutes 27 seconds East, along said highway, a distance of 460.30 feet, to a point of curvature to the right, said curve having a Central angle of 01 degrees 11 minutes 00 seconds, a Radius of 22,843.31 feet, a Chord bearing of North 00 degrees 05 minutes 10 seconds West, 471.80 feet; thence North 00 degrees 30 minutes 20 seconds East, 96.40 feet to the point of beginning being 47.35 acres, more or less. ALSO KNOWN AS. Lots 2, 3, 4, 5 and 6, Fielden J. Hale's Suburban Lots to Battle Creek, Madison County, Nebraska, EXCEPT a tract of land located in the Westerly part of Lots 5 & 6 of Fielden J. Hale's Suburban Lots in the Village of Battle Creek in the Southwest Quarter of Section 31, Township 24 North, Range 2 West of the 6th P.M., Madison County, Nebraska, described as follows: Beginning at the West Quarter corner of said Section 31 ; thence Easterly on the North Line of the Southwest Quarter of said Section 31 a distance of 73.0 feet; thence Southerly 90 degrees 00 minutes right a distance of 96.4 feet to point of curvature, thence continuing Southerly on a 22,843.31 foot radius curve to the left (initial tangent of which coincides with the last described course) a distance of 471.8 feet to the point of tangency; thence continuing Southerly tangent a distance of 460.3 feet to a point on the Southwesterly Property Line; thence Northwesterly 141 degrees 12 minutes right and on said Property Line a distance of 110.6 feet to a point on the West Line of said Southwest Quarter: thence Northerly on said West Line a distance of 943.8 feet to the point of beginning.

And

EXCEPT a tract of land located in the Westerly part of the South 2 rods of the West Half of the Northwest Quarter of Section 31, Township 24 North, Range 2 West of the 6th P.M., Madison County, Nebraska, described as follows: Beginning at the West Quarter Corner of said Section 31, thence Northerly on the West Line of the West Half of the Northwest Quarter of Section 31 a distance of 33.0 feet; thence Easterly on a line 33.0 feet Northerly from the parallel to the South Line a distance of 73.5 feet thence Southerly a distance of 33.0 feet to a point on said South Line; thence Westerly on said South Line a distance of 73.0 feet to the point of beginning.

And

EXCEPT part of the Southwest Quarter of the Southwest Quarter, Section 31, Township 24 North, Range 2 West of the 6th P.M., Madison County, Nebraska, otherwise known as a part of Lots 3, 4 and 6 of Fielden J. Hale's Suburban Lots to the Village of Battle Creek, Madison County, Nebraska, more particularly described as follows: Commencing at the Southwest corner of Section 31 Township 24 North, Range 2 West of the P.M., Madison County, Nebraska; thence East on the South line of said Section 31, which is assumed to bear due East, a distance of 955.0 feet; thence Northerly on a line bearing North 1 degree 15 minutes West a distance of 962.0 feet thence Easterly on a line bearing North 87 degrees 16 minutes East a distance of 8 feet more or less to the East property line of the alley which is the point of beginning; thence Northwesterly on a line whose bearing is North 51 degrees 02 minutes West a distance of 633.3 feet, thence Southwesterly on a line whose bearing is South 50 degrees 34 minutes West a distance of 139 feet more or less to the center line of the old Battle Creek Channel; thence Southeasterly along the center line of the old Battle Creek Channel to the point of intersection with a line whose bearing is South 87 degrees 16 minutes West from the point of beginning; thence Easterly on a line whose bearing is North 87 degrees 16 minutes East a distance of 371 feet more or less to the point of beginning.

And

EXCEPT Lot 1 and Lot 2 of Tiedgen's Addition to the City of Battle Creek, Madison County, Nebraska, a Lot Subdivision of Lot 5 of Fielden J. Hale's Suburban Lots to the Village of Battle Creek Madison County, Nebraska, less that part taken by the State of Nebraska Department of Roads for Highway Right-of-Way purposes.

And

EXCEPT A Tract of land within Lot 6 of Fielden J. Hale's Suburban Lots to the Village of Battle Creek, Madison County, Nebraska, in the Southwest Quarter of Section 31, Township 24 North, Range 2 West of the 6th Principal Meridian, Madison County, Nebraska, more particularly described as: Commencing at the West quarter corner of Section 31, Township 24 North, Range 2 West of the 6th Principal Meridian, Madison County, Nebraska; Thence S01 °08'06"E along the West line of the Southwest Quarter of said Section 31 a distance of 660.91'; thence N89 °09'56" a distance of 72.28' to a point on the East right of way line of State Highway No. 121 being the Point of Beginning; thence N89 °09'56"E along the North property line a distance of 240.00'; thence S00°50'04"E along the East property line a distance of 180.00'; thence S44°14'24"W along the East property line a distance of 148.00'; thence N51 °49'43"W along the South property line a distance of 174.00' to a point on the East right of way line of State Highway No. 121; thence N0024850'04"W along the East right of way line of State Highway No. 121 a distance of 175.00' to the Point of Beginning.

EXHIBIT "C"

Site Plan

