

02-10756

INST. NO. \_\_\_\_\_  
STORY COUNTY, IOWA  
FILED FOR RECORD

WHEN RECORDED RETURN TO:

BRIAN J HUMKE  
NYEMASTER LAW FIRM  
1416 BUCKEYE AVE SUITE 200  
AMES IOWA 50010

*Handwritten initials and "RGGDM" stamp*

AM JUL 25 2002 PM

12 32

SUSAN L VANDE KAMP, Recorder *SV*  
REC. FEE \$26.00 AUD. FEE \$

This document was prepared by R. Michael Hayes, Hubbell Realty Company, 904 Walnut Street, Suite 900, Des Moines, Iowa 50309-3574, (515) 280-2051

SPACE ABOVE THIS LINE FOR RECORDER

**CONSERVATION EASEMENT**

This **Conservation Easement** (the "Conservation Easement") is made and granted by The Reserve, L.C., ("Grantor"), to The City of Ames, Iowa ("Grantee"), effective as of the later of the date of recording of the Final Plat of The Reserve or the date of recording of this Conservation Easement.

Witnesseth:

Grantor is the owner in fee simple of Lots 1 through 30, The Reserve, an Official Subdivision, now included in and forming a part of the City of Ames, Story County, Iowa;

Certain portions of said Lots 1 through 30 within The Reserve, as more particularly described below, (the "Property"), have scenic, natural and aesthetic value in their present state as a natural area;

The Grantor is willing to grant a Conservation Easement over the Property, thereby restricting and limiting the use of the Conservation Easement areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and the Grantee is willing to accept such easement;

The Grantor and Grantee recognize the scenic, natural and aesthetic value of the Property in its present natural state and have, by the conveyance of a conservation easement to the Grantee, the common purpose of conserving the natural values of the Property, preserving the natural character of the Property, and preventing the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of the Property in its scenic, natural and wooded condition;

Therefore, in consideration of the sum of One Dollar and other valuable consideration paid to the Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants and conveys unto the Grantee and its successors in perpetuity an interest and conservation easement of the nature and character and to the extent set forth in this Conservation Easement, in respect to the lands of the Grantor, more particularly described as follows:

The portions of Lots 1 through 30, The Reserve, an Official Subdivision, now included in and forming a part of the City of Ames, Story County, Iowa, as more particularly described as follows and as shown on the recorded final plat of The Reserve as the "Preservation Area" and whose boundary is marked on said final plat as the "Preservation Boundary":

- a) The Eastern thirty feet (30.0') of Lots 1 through 5, The Reserve, as measured parallel to the eastern lot line of said Lots 1 through 5;
- b) The portions of Lots 6, 7, 8, and 9, The Reserve, that lie Northeasterly, Northerly or Northwesterly, as the case may be, of the following described line:

Commencing at the Southeast corner of Lot 1, The Reserve; thence Westerly 30.00 feet along the Southerly lot line of said Lot 1; thence N 00° 06' 10" W, 458.86' to the point on the Northerly lot line of Lot 5, The

Reserve, and the Point of Beginning of said line; thence N 47° 52' 57" W, 133.18 feet to a point on the Northwesterly lot line of Lot 6, The Reserve; thence N 66° 08' 26" W, 105.43 feet to a point on the Westerly lot line of Lot 7, The Reserve; thence S 84° 03' 14" W, 135.83 feet to a point on the Westerly lot line of Lot 8, The Reserve; thence S 48° 28' 09" W, 124.16 feet to a point on the Southwesterly lot line of Lot 9, The Reserve, and the Point of Terminus of said line;

c) The portions of Lots 10, 11, 12, 13, 14 and 15, The Reserve, that lie Westerly of the following described line:

Commencing at the Southwest corner of Lot 15, The Reserve; thence 20.15 feet Easterly along the Southerly line of said Lot 15 to the Point of Beginning of said line; thence N 06° 49' 50" E, 245.87 feet to a point on the Northerly line of Lot 13, The Reserve; thence N 29° 42' 07" W, 58.70 feet to a point on the Northerly lot line of Lot 12, The Reserve; thence N 75° 25' 45" E, 54.28 feet along the northerly line of said Lot 12; thence N 46° 59' 24" W, 94.47 feet to a point on the northerly line of Lot 11, The Reserve; thence N 63° 01' 12" W, 30.00 feet; thence N 32° 45' 09" W, a distance of 60.00 feet; thence N 16° 41' 49" E, 60.00 feet to a point on the Northerly lot line of Lot 10, The Reserve and the Point of Terminus of said line (and which point is also the Point of Terminus of the line described in (2) above);

d) The portions of Lots 16, 17, and 18, The Reserve, that lie Easterly of, the portions of Lots 18, 19 and 20, The Reserve, that lie Northerly of, and the portions of Lots 20, 21 and 22 that lie Westerly of, the following described line:

Commencing at the Southeast corner of said Lot 16; thence S 89° 55' 18" W, 5.12 feet along the Southerly lot line of said Lot 16; thence S 00° 41' 46" E, 2.46 feet along the Southerly lot line of said Lot 16; thence S 88° 28' 07" W, 15.36 feet along the Southerly line of said Lot 16 to the Point of Beginning of said line; thence N 06° 49' 50" E, 240.09 feet; thence N 29° 42' 07" W, 48.83 feet; thence N 41° 08' 40" W, 56.63 feet; thence N 88° 17' 13" W, a distance of 205.88 feet; thence S 32° 29' 10" W, 119.55 feet; thence S 09° 05' 30" W, 234.14 feet to a point on the Southerly lot line of Lot 22, The Reserve, and the Point of Terminus of said line.

e) The portions of Lots 23, 24, 25, 26 and 27, The Reserve, that lie Easterly of, and the portion of said Lot 27 that lies Northerly of, the following described line:

Commencing at the Southeast corner of said Lot 23; thence S 89° 35' 12" W, 25.35 feet along the Southerly lot line of said Lot 23 to the Point of Beginning of said line; thence N 08° 02' 32" E, 250.78 feet to a point on the Northerly lot line of said Lot 25; thence N 13° 36' 18" E, 89.50 feet to a point on the Northerly lot line of said Lot 26; thence N 8° 33' 18" E, 84.81 feet; thence N 80° 55' 35" W, 90.03 to a point on the Westerly lot line of said Lot 27 and the Point of Terminus of said line;

f) The portion of Lot 28, The Reserve that lies Easterly and Southerly of the following described line:

Commencing at the Southwesterly corner of said Lot 28 and the Point of Beginning of said line; thence N 11° 46' 41" E, 56.99 feet along the Westerly lot line of said Lot 28; thence S 81° 18' 43" E, 110.00 feet; thence N 10° 26' 19" E, 103.01 feet to a point on the Northerly lot line of said Lot 28 and the Point of Terminus of said line;

g) The portion of Lot 29, The Reserve that lies Easterly and Northerly of the following described line:

Commencing at the Southeasterly corner of said Lot 29; thence S 84° 19' 23" W, 70.00 feet along the Southerly lot line of said Lot 29 to the Point of Beginning of said line; thence N 18° 20' 21" W, 115.68 feet; thence N 76° 12' 21" W, 79.50 feet to a point on the Westerly lot line of said Lot 29 and the Point of Terminus of said line; and

h) The following described portion of Lot 30, The Reserve: Commencing at the Northeasterly corner of said Lot 30 as the Point of Beginning; thence S 18° 04' 16" W, 83.46 feet along the Easterly lot line of said Lot 30; thence N 76° 12' 21" W, 13.00 feet; thence N 16° 43' 00" E, 74.85 feet to a point on the Northerly lot line of said Lot 30; thence N 75° 43' 44" E, 18.00 feet along the Northerly lot line of said Lot 30 to the Northeasterly corner of said Lot 30 and the Point of Beginning.

[This Conservation Easement is also described as the area within the Preservation Boundary shown on the recorded final plat of The Reserve that is more particularly described as follows:

Beginning at the Southeast Corner of Lot 1 of The Reserve; thence S 89° 55' 18" W, 30.00 feet along the south line of said Lot 1; thence N 00° 06' 10" W, 458.86 feet; thence N 47° 52' 57" W, 133.18 feet; thence N 66° 08' 26" W, 105.43 feet; thence S 84° 03' 14" W, 135.83 feet; thence S 48° 28' 09" W, 124.16 feet; thence S 16° 41' 49" W, 60.00 feet; thence S 32° 45' 09" E, 60.00 feet; thence S 63° 01' 12" E, 30.00 feet; thence S 46° 59' 24" E, 94.47 feet; thence S 75° 25' 45" W, 54.28 feet; thence S 29° 42' 07" E, 58.70 feet; thence S 06° 49' 50" W, 245.87 feet to a point on the south line of Lot 15; thence S 89° 55' 18" W, 25.27 feet; thence S 00° 41' 46" E, 2.46 feet; thence S 89° 35' 12" W, 15.36 feet along the south line of Lot 16; thence N 06° 49' 50" E, 240.09 feet; thence N 29° 42' 07" W, 48.83 feet; thence N 41° 08' 40" W, 56.63 feet; thence N 88° 17' 13" W, 205.88 feet; thence S 32° 29' 10" W, 119.55 feet; thence S 09° 05' 30" W, 234.14 feet to a point on the south line of Lot 22; thence S 89° 35' 12" W, 45.63 feet along the south line of Lots 22 and 23; thence N 08° 02' 32" E, 250.78 feet; thence N 13° 36' 18" E, 89.50 feet; thence N 08° 33' 18" E, 84.81 feet; thence N 80° 55' 35" W, 90.03 feet to the west line of Lot 27; thence N 11° 46' 41" E, 65.00 feet along the west line of Lots 27 and 28; thence S 81° 18' 43" E, 110.00 feet; thence N 10° 26' 19" E, 103.01 feet to the north line of Lot 28; thence following said line S 89° 50' 07" E, 6.81 feet; thence N 84° 19' 23" E, 48.77 feet; thence leaving said line N 18° 20' 21" W, 115.68 feet; thence N 76° 12' 21" W, 92.50 feet; thence N 16° 43' 00" E, 74.85 feet to the north line of The Reserve; thence following said line N 75° 43' 44" E, 118.95 feet; thence S 83° 47' 29" E, 396.53 feet; thence S 65° 37' 00" E, 176.23 feet; thence S 46° 34' 21" E, 109.56 feet to the Northeast Corner of The Reserve; thence S 00° 06' 11" E, 622.49 feet to the Point of Beginning, containing 6.44 acres.]

The terms, conditions and restrictions of the Conservation Easement are as set forth:

1. There shall be no dumping of soil or other material within the Conservation Easement Area.
2. There shall be no excavation, dredging or removal of loam, gravel, soil, rock, sand or other material nor any building of structures or roads or other change in the general topography of the land with the following exceptions:
  - a. Soil, loam and other material may be moved to prevent erosion;
  - b. Soil, loam and other material may be moved to maintain the existing foot trails.

3. There shall be no removal, destruction or cutting of trees, shrubs or other vegetation except as may be necessary for:
  - a. The maintenance of existing foot trails;
  - b. The prevention or treatment of disease;
  - c. Good husbandry practices.
4. There shall be no activities, actions or uses detrimental or adverse to water conservation, erosion control, soil conservation and fish and wildlife or habitat preservation.
5. No structures shall be constructed within the Conservation and Preservation Easement on Lots 6, 7, 8, 9, 10, 28 and 29, as shown on the Official Plat for The Reserve.
6. The owner of any lot burdened by this Conservation Easement shall not engage in, permit, participate in or aid and abet any cutting, burning or other removal of trees or prairie vegetation until after 30 days notice to and the authorization of the Grantee. Any destruction or removal of vegetation in violation of this provision shall make such owner liable to Grantee for the full cost of replacing the vegetation that was destroyed or removed.
7. Grantee, and its employees, agents and contractors, may go onto the above Conservation Easement areas to perform a program of work for fostering the conservation and preservation of the woodlands and prairies contained in the above Conservation Easement area substantially in accordance with a plan for such work approved by the Grantee, on the advise of the Story County Conservation Commission staff or other professionals, after notice to an opportunity for comment, by the owners of the land on which said work is to be performed. No such work shall be performed without at least one (1) week's prior written notice of the date and schedule for such work to the owner(s) of the Lot(s) on which such work is to be performed.

Grantee, and its employees, agents and contractors, may also cross the remaining portions of the Lots burdened by such Conservation Easement areas to the extent reasonably necessary to access the Conservation Easement areas. Grantee shall restore any damage to such remaining portions of such Lots resulting from any such crossing thereof to substantially its condition immediately prior to such crossing, including replacing any damaged sod with new sod.

Grantee shall protect, defend, indemnify and hold harmless the owner of any Lot burdened by this Conservation Easement from any mechanic's liens or other liens of a similar nature arising from any work performed by or on behalf of Grantee, and from any claims for damage to property or injury to or death of any person, including any employee of Grantee or Story County, arising from the use the Conservation Easement areas by Grantee or any work performed by Grantee, or its employees, agents and contractors, in the Conservation Easement areas or on the Lots burdened by the Conservation Easement areas.

8. This Conservation Easement is solely for preservation and conservation of the Conservation Easement areas and no member of the general public is granted any right to enter on or use any portion of the Conservation Easement area without the prior consent of the owners of the Lot burdened by such portion of the Conservation Easement area, which consent shall be in such owners sole discretion.
9. In the event the owner(s) of any Lot burdened by a portion of the Conservation Easement is in violation of any of the terms, conditions, or restrictions of this Conservation Easement and such violation continues after a 30-day notice to such then owner(s) of such Lot, then Grantee may

institute a suit against such owner(s) for a temporary and/or permanent injunction to enjoin such violation and/or to require the restoration of the Property affected by such violation to its prior condition, and for damages for breach of covenant.

- 10. In the event that Grantee, or its employees, agents and contractors are in violation of any of the terms, conditions, or restrictions of this Conservation Easement and such violation continues after a 30-day notice to such then owner(s) of such Lot, then any owner(s) of a Lot burdened by a Conservation Easement may institute a suit against Grantee (and if applicable any other party acting on behalf of Grantee) for a temporary and/or permanent injunction to enjoin such violation and/or to require the restoration of the Property affected by such violation to its prior condition, and for damages for breach of covenant.
- 11. The Grantor expressly retains for itself, and its successors and assigns as to each Lot burdened by this Conservation Easement, the right to continue the use such Lot for all purposes not inconsistent with this Conservation Easement.
- 12. The easements, conditions, restrictions, and covenants imposed by this Conservation Easement shall not only be binding upon the Grantor and Grantee but also upon their respective agents and assigns, and all other successors to their interest, and shall continue as a servitude running in perpetuity with the above described land.

20<sup>th</sup> IN WITNESS WHEREOF, the Grantor has executed this instrument as of the day of July, 2002.

**THE RESERVE, L.C.,**

**By: Hubbell Realty Company, Manager**

By: *James W. Hubbell III*  
**James W. Hubbell III, President**

By: *R. Michael Hayes*  
**R. Michael Hayes, Secretary**

STATE OF IOWA     )  
  ) SS.  
COUNTY OF POLK    )

On this 20<sup>th</sup> day of July, 2002, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared James W. Hubbell III and R. Michael Hayes, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of Hubbell Realty Company, the Manager of **The Reserve, L. C.**, an Iowa limited liability company, executing the within and foregoing instrument; that the instrument was signed on behalf of said corporate Manager by authority of its Board of Directors and on behalf of the limited liability company by authority of the Members; and said James W. Hubbell III and R. Michael Hayes, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporate Manager and the limited liability company, by each entity and by them voluntarily executed.



*April Tufano*  
Notary Public in and for said State