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Doc ID: 030402090008 Type: GEN  
Kind: AGREEMENT MISCELLANEOUS  
Recorded: 01/04/2016 at 08:25:11 AM  
Fee Amt: \$32.00 Page 1 of 6  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2015-00166859

BK 15858 PG 628-633

**Type of Document: DEVELOPMENT AGREEMENT**

Jennifer Drake, 6900 Westown Parkway, West Des Moines, IA 50266 (515) 280-2057

**Preparer Information:** (Individual's Name, Street Address, City, Zip, Phone)

RETURN TO: **Taxpayer Information:** (Individual/Company Name, Street Address, City, Zip)

Tuscany Reserve, LLC, 6900 Westown Parkway, West Des Moines, Iowa 50266

**Return Document to:** (Individual/Company Name, Street Address, City, Zip)

**Grantors:** Tuscany Reserve, LLC

**Grantees:** City of Altoona

**Legal Description:**

Outlot R and Outlot X in Tuscany Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa

**Book & Page Reference:**

N/A

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into as of this 7<sup>th</sup> day of November, 2015, by and between the **CITY OF ALTOONA, IOWA**, (the "City"), and **TUSCANY RESERVE, LLC**, an Iowa limited liability company, (the "Developer").

**WHEREAS**, the Developer is currently the owner of Outlot R and Outlot X in Tuscanly Plat 1 which is part of the larger John Altman Planned Unit Development, (the "Tuscany PUD"); and

**WHEREAS**, the Tuscanly PUD has a 30% open space requirement for the overall development which includes Outlot R and part of Outlot X, which is depicted as Lot "E" of the Master Plan, as shown on the attached Exhibit A; and

**WHEREAS**, the required open space requirement is to be owned and maintained by the Tuscanly Owner's Association, (the "HOA"); and

**WHEREAS**, an opportunity has presented itself for a portion of Lot "E", generally being the southwest 180' x 855', (3.5 Ac), to be divided and sold to the adjacent property owner and incorporated into their development plan; and

**WHEREAS**, the parties agree that pursuant to the terms and conditions contained herein, this opportunity would be mutually beneficial to the City, Developer and adjacent property owner.

**NOW, THEREFORE IT IS AGREED**, by the City and Developer, and its successors or assigns as follows:

1. The division and sale of the portion of Lot "E", shown on the attached Exhibit B, to the adjacent property owner shall not violate the 30% open space requirement set forth in the Tuscanly PUD and Developer shall not be required to replace the property sold to the adjacent property owner with additional property to meet such open space requirement.
2. The City will accept ownership of the remainder of Lot "E" from the Developer as a public park at such time as the land surrounding Lot "E" is platted by the Developer.
3. The transfer of the remainder of Lot "E" to the City shall not violate the 30% open space requirement set forth in the Tuscanly PUD and the Developer shall not be required to replace the property transferred to the City with additional property to meet such open space requirement.
4. The transfer of property to the adjacent property owner and to the City, as contemplated herein, will not affect the tax abatement provisions set forth in the Tuscanly PUD and are affirmatively confirmed.

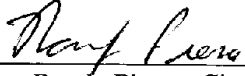
5. Prior to the transfer of ownership of the remainder of Lot "E" to the City, the Developer agrees to allow the City and/or the adjacent property owner to perform grading on Lot "E" subject to approval by the Developer. Any grading performed on Lot "E" would be done to facilitate the development of Lot "E" as a park and not create additional expense for the Developer to construct future Tuscany plats. The entity performing the grading would be responsible for any erosion control, permitting and engineering expense.
6. The City agrees to indemnify and hold Developer harmless from any injury or property damage, including the reimbursement of reasonable attorney fees, arising out of its use and occupation of Lot "E".
7. This Agreement may not be amended or assigned by either party without the express permission of the other party.
8. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.
9. This Agreement is made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with the laws of the State of Iowa. If either party incurs attorney fees or costs related to the enforcement of the Agreement, the non-prevailing party shall be responsible for paying the prevailing party the reasonable amount of such attorney fees and costs.
10. This Agreement shall be binding upon the developer's heirs, assigns, or successors in interest and shall be deemed to run with the land.

**IN WITNESS WHEREOF**, the City and Developer cause this Development Agreement to be signed, in duplicate, by their duly authorized officers, and the City's Seal to be affixed hereto, as of the day and year first above written.

**CITY OF ALTOONA, IOWA**

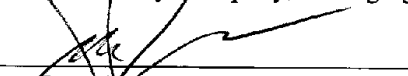
**(SEAL)**

By:   
 J.M. Skip Conkling, Mayor

By:   
 Randy Pierce, City Clerk

**TUSCANY RESERVE, LLC**

By: Hubbell Realty Company, Managing Member

By:   
 Joseph F. Pietruszynski, Vice President

By:   
 Jennifer Drake, Assistant Secretary

STATE OF IOWA )  
 )SS.  
COUNTY OF DALLAS )

On this 9 day of December 2015 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joseph F. Pietruszynski and Jennifer L. Drake, to me personally known, who being by me duly sworn did state that they are the Vice President and Assistant Secretary, respectively, of Hubbell Realty Company, an Iowa corporation, the managing member of **Tuscany Reserve, LLC**, an Iowa Limited Liability Company; that said instrument was signed on behalf of limited liability company.

Christine Cordaro  
Notary Public in and for said State



STATE OF IOWA )  
 )SS.  
COUNTY OF POLK )

On this day of December 8, 2015 before me, a Notary Public in and for the State of Iowa, personally appeared J.M. Skip Conkling and Randy Pierce, to me personally known, who being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of the **City of Altoona, Iowa**; an Iowa municipal corporation; that the seal affixed hereto is the corporate seal of said municipal corporation; that said instrument was signed on behalf of said municipal corporation by authority of its City Council, as approved by Roll Call No. 11 adopted by the City Council on the December 7 day of 2015; and the said J.M. Skip Conkling and Randy Pierce, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Cindy Thurman  
Notary Public in and for said State

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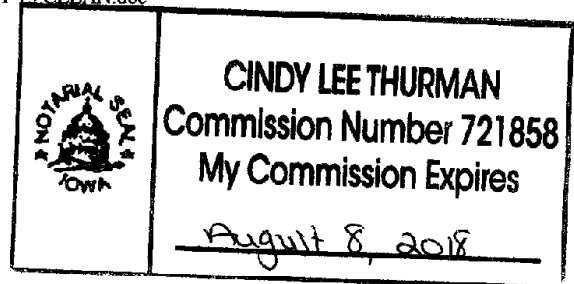
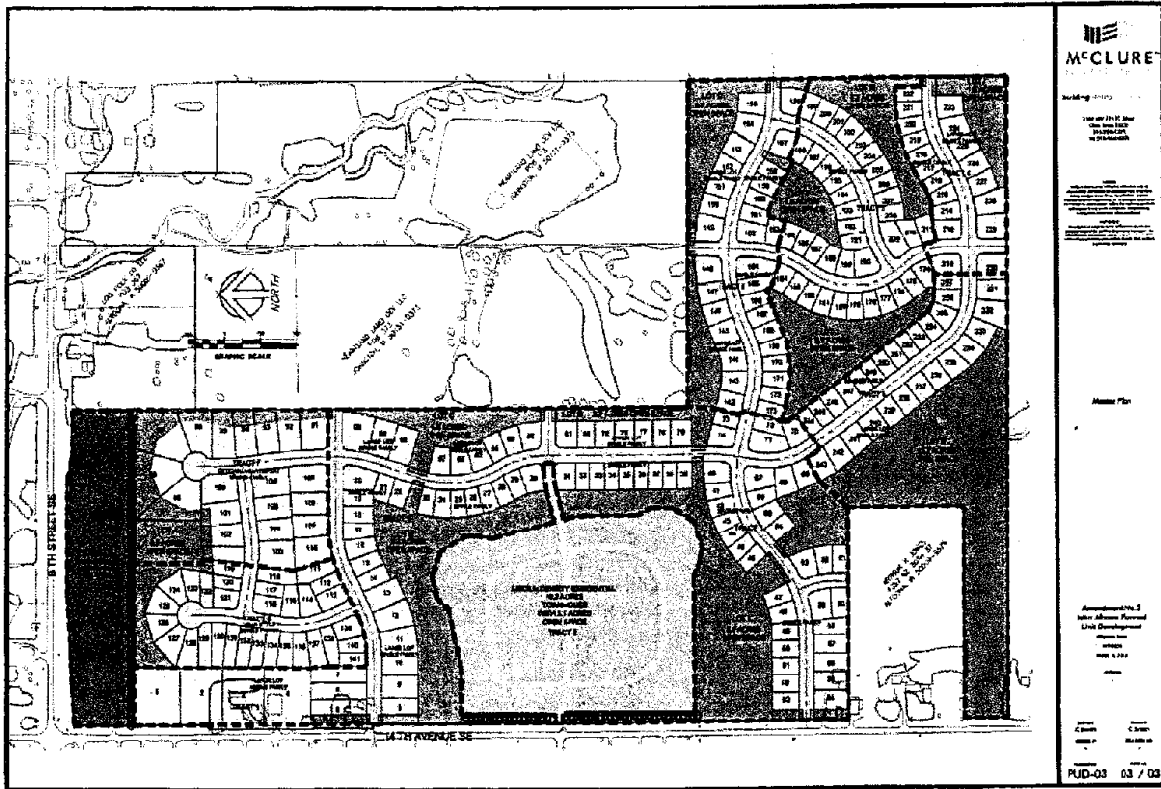


EXHIBIT A



### EXHIBIT B

