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 Revenue Tax: \$0.00
 Polk County Iowa
 JULIE M. HAGGERTY RECORDER
 File# 2009-00037207

3K 12850 PG 180-182

When Recorded, Return to:

Chet A. Mellema
 Hubbell Realty Company
 6900 Westown Parkway
 West Des Moines, IA 50266

Prepared By: Chet A. Mellema, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, Iowa 50266-2520 (515) 280-2042

SPACE ABOVE THIS LINE FOR RECORDER

SIDEWALK EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned property owner (hereinafter called "Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey unto the CITY OF ALTOONA, IOWA, a municipal corporation (hereinafter called "City"), a perpetual sidewalk easement and right-of-way under, over, on, through, across and within the following described real estate:

A five foot (5.0') strip of land to be used for Sidewalk Easement located in the Southern 5.00 feet, parallel and adjacent to the Southern line of Lots 5-8, 15, 16, 18-22, 24, 25, 48, 49, and 112-117, and the Northern 5.00 feet, parallel and adjacent to the Northern line of Lots 101-111 and 118-123, the Eastern 5.00, feet parallel and adjacent to the Eastern line of Lots 8-14, 22, 23, 53-55, 82-101, 117, 118, the Western 5.00 feet, parallel and adjacent to the Western line of Lots 17, 18, 26-48, 51, 52, 112 and 123, all in the Official Plat of Tuscany Plat 1, now included in and forming a part of the City of Altoona, Polk County, Iowa, as more particularly shown on said Tuscany Plat 1,

(hereinafter called "Easement Area"), for the purpose of the City constructing, reconstructing, repairing, replacing, enlarging, inspecting and maintaining public sidewalks, together with all necessary structures and appurtenances thereto, under, over, on, through, across and within said Easement Area.

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

1. **ERECTION AND PLACEMENT OF STRUCTURES, OBSTRUCTIONS, PLANTINGS OR MATERIALS PROHIBITED.** Grantor and its grantees, assigns and transferees shall not erect any fence or other structure under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the City, nor shall Grantor

cause or permit any obstruction, planting or material to be placed under, over, on, through across or within the Easement Area without obtaining the prior written consent of the City.

2. **CHANGE OF GRADE PROHIBITED.** Grantor and its grantees, assigns and transferees shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City. The City shall have the right to restore any changes in grade, elevation or contour without prior written consent of the Grantor, its grantees, assigns or transferees.
3. **RIGHT OF ACCESS.** The City 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 from property adjacent thereto as herein described, including but not limited to, the right to remove any unauthorized fences, structures, obstruction, planting or material placed or erected under, over, on, through, across or within the Easement Area.
4. **MAINTENANCE.** The City shall not be responsible for any maintenance of the land located within the Easement Area whatsoever and that responsibility shall remain with the Grantor, its grantees, assigns or transferees. The City may, however, perform such maintenance should it determine in its sole discretion such maintenance is needed.
5. **PROPERTY TO BE RESTORED.** The City shall restore the Easement Area after exercising its rights hereunder, provided, however, that the City's duty of restoration shall be limited to grading and replacing grass, sod or any other ground cover (but not including any structures, trees or shrubs). The City shall not be responsible for any construction, reconstruction, replacement, repair or maintenance of any improvements located within the Easement Area.
6. **LIABILITY.** Except as may be caused by the negligent acts or omissions of the City, its employees, agents or its representatives, the City shall not be liable for injury or property damage occurring in or to the Easement Area, the property abutting said Easement Area, nor for property damage to any improvements or obstructions thereon resulting from the City's exercise of this Easement. In the event that the City intentionally disturbs the property in the easement area, it shall restore the surface of the property in the easement area as stated in provision #5 of this easement.
7. **EASEMENT BENEFIT.** This Easement shall be for the benefit of the City, its successors and assigns, and its permittees and licensees.
8. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed perpetual and to run with the land and shall be binding on Grantor and on Grantor's heirs, successors and assigns.

Grantor does HEREBY COVENANT with the City that (i) Grantor holds said real estate described in this Easement by title in fee simple; (ii) that Grantor has good and lawful authority to convey the

same; and (iii) said Grantor covenants to WARRANT AND DEFEND the said premises against the 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.

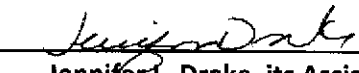
Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 2nd day of July, 2008.

TUSCANY RESERVE, LLC

By: **Hubbell Realty Company, its Managing Member**

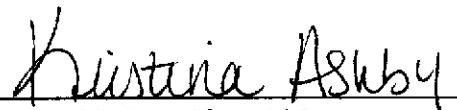
By: 
Dan Dutcher, its Vice President

By: 
Jennifer L. Drake, its Assistant Secretary

STATE OF IOWA, COUNTY OF DALLAS) ss:

This instrument was acknowledged before me on July 2, 2008 by Dan Dutcher and Jennifer L. Drake as a Vice President and an Assistant Secretary, respectively, of Hubbell Realty Company, an Iowa corporation and the Managing Member of **Tuscany Reserve, LLC**, an Iowa limited liability company.




Notary Public in and for said State