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 Fee Amt: \$17.00 Page 1 of 3  
 Revenue Tax: \$0.00  
 Polk County Iowa  
 JULIE M. HAGGERTY RECORDER  
 File# 2009-00037209

BK **12850** PG **186-188**

**When Recorded, Return to:**

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*

**SURFACE WATER FLOWAGE 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, a municipal corporation (hereinafter called the "City"), a perpetual Surface Water Flowage Easement for the purpose of maintaining surface water flowage, under, over, through and across the real estate described as follows:

1. A fifteen (15.0') strip of land to be used for Surface Water Flow Easement located in the South 15 feet, parallel and adjacent to the South line of Lots 62, 64-68 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;
2. A fifteen (15.0') strip of land to be used for Surface Water Flow Easement located in the Southern 7.5 feet, parallel and adjacent to the Southern line of Lots 4 and 9 and the Northern 7.5 feet, parallel and adjacent to the Northern line of Lots 5-8, 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; and
3. A thirty two foot (32') strip of land to be used for Surface Water Flowage Easement located parallel and adjacent to the Western line of Lot 1, described as follows: Beginning at the Northwestern corner of Lot 1, thence S89°57'31"E along the North line of Lot 1, 32.00 feet; thence S00°19'30"E, 80.00 feet; thence N89°57'31"W, 32.00 feet to the West line of Lot 1, thence N00°19'30"W along said West line 80.00 feet to the Point of Beginning, 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, enlarging and maintaining surface water flowage, together with necessary appurtenances thereto, under, over, through and across 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 HOA, 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 2<sup>ND</sup> day of July, 2008.

**TUSCANY RESERVE, LLC**

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

By: *Dan Dutcher*  
Dan Dutcher, its Vice President

By: *Jennifer Drake*  
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.



*Kristina Ashby*  
Notary Public in and for said State