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Doc ID: 021769950003 Type: GEN  
Recorded: 12/10/2008 at 10:44:42 AM  
Fee Amt: \$17.00 Page 1 of 3  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2009-00037210

BK **12850** PG **189-191**

**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*

**STORM SEWER 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 Storm Sewer Easement for the purpose of maintaining storm sewer lines and flowage, under, over, through and across the real estate described as follows:

1. A fifteen (15.0') strip of land to be used for Storm Sewer Easement located in the Southwestern 7.5 feet, parallel and adjacent to the Southwestern line of Lot 105 and the Northeastern 7.5 feet, parallel and adjacent to the Northeastern line of Lot 106, 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
2. A fifteen (15.0') strip of land to be used for Storm Sewer Easement located in the Western 10.00 feet, parallel and adjacent to the Western line of Lots 62 and 63 and the Eastern 5.00 feet, parallel and adjacent to the Eastern line of Lot 64, 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 storm water flowage and storm sewer lines, 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 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.

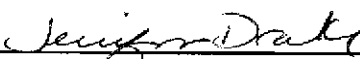
Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 20<sup>th</sup> day of July, 2008.

**TUSCANY RESERVE, LLC**

By: Hubbell Realty Company, its Managing Member

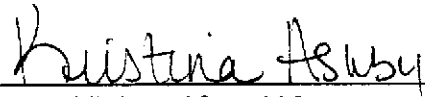
By:   
Dan Dutcher, its Vice President

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