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Fee Amt: \$27.00 Page 1 of 5
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2009-00037213

BK 12850 PG 198-202

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

PUBLIC UTILITY 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"), and to all public utilities who may require use of the Easement Area, a perpetual easement and right-of-way under, over, on, through, across and within the following described real estate:

1. A ten foot (10') strip of land to be used for Public Utility Easement located in the Northern 10 feet, parallel and adjacent to the Northern line of Lots 5- 8, 15, 16, 18- 22, 24, 25, 32, 48- 51, 55-59, 63-82, and 101-117, 119-123, the Southern 10 feet , parallel and adjacent to the Southern line of Lots 15, 16, 18-22, 24, 25, 31, 48,-51, 55-58, 64-82, and 101-123, the Eastern 10 feet, parallel and adjacent to the Eastern line of Lots 1-4, 8-14, 16, 17, 22, 23, 25- 47, 50, 52-55, 59-63, 83-101, 117, and 118, the Western 10 feet , parallel and adjacent to the Western line of Lots 1-4, 9-15, 18, 23, 26-48, 51-54, 59-61, 83-100, 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;
2. A fifteen foot (15') strip of land to be used for Public Utility Easement located in the Northern 15 feet, parallel and adjacent to the Northern line of Lot 118 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;
3. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot W described as: Beginning at the Northeast corner of Lot 19, thence N85°58'35"E, 40.10 feet to the Northwest corner of Lot 20; thence S00°02'47"E along the West line of said Lot 20, 10.00 feet; thence S85°58'45"W, 40.11 feet to the East line of said Lot 19, thence

N00°02'47"W along said East line, 10.00 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;

4. A strip of land to be used for Public Utility Easement located in Outlot U described as: Beginning at the Southeast corner of Lot 34, thence S17°23'20"W, 10.00 feet; thence N72°38'31"W, 139.99 feet; thence S17°23'06"W, 57.04 feet; thence Southwesterly along a 360 foot radius curve concave Easterly, 14.13 feet (chord bearing S16°15'39"W, 14.13 feet); thence S75°40'08"E, 100.00 feet; thence S16°38'28"W, 5.01 feet to the Northeast corner of Lot 35; thence N75°40'08"W along the North line of Lot 35, 110.00 feet to the West line of Outlot U; thence Northeasterly along the said West line along a 370 foot radius curve concave Easterly, 19.72 feet (chord bearing N15°51'29"E, 19.72 feet); thence N17°23'06"E along said West line, 67.04 feet to the Southwest corner of Lot 34, thence S72°38'31"E along the South line of Lot 34, 149.99 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;
5. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot V described as: Beginning at the Northeast corner of Lot 99, thence Northeasterly along the East line of Outlot V along a 430 foot radius curve concave Easterly, 17.09 feet (chord bearing N16°14'48"E, 17.09 feet); thence N17°23'06"E, 33.76 feet to the Southeast corner of Lot 100; thence N72°36'54"W along the South line of said Lot 100, 10.00 feet; thence S17°23'06"W, 33.76 feet; thence Southwesterly along a 440 foot radius curve concave Easterly, 17.48 feet to the North line of Lot 99; thence S74°53'31"E along said North line, 10.00 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;
6. A five foot (5') strip of land to be used for Public Utility Easement located in the Northern 5 feet, parallel and adjacent to the Northern line of Lots 17, 26, 33, 35, 85, 89, and 99 the Eastern 5 feet, parallel and adjacent to the Eastern line of Lots 20, 71, 74, 80, and 113 the Western 5 feet, parallel and adjacent to the Western line of Lots 7, 19, 68, 69, 101, and 117 the Southern 5 feet, parallel and adjacent to the Southern line of Lots 52, 53, 61, 62, 92, 95, and 100 all in the Official Plat of Tuscany Plat 1, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 1;
7. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot T described as: Beginning at the Southeast corner of Lot 47, thence S00°15'22"E, 10.00 feet, thence S89°44'38"W, 100.00 feet; thence S00°15'22"E, 54.18 feet to the North line of Lot 48; thence N76°07'47"W along said North line, 10.31 feet to the West line of Outlot T, thence N00°15'22"W, 61.66 feet to the Southeast corner of Lot 47; thence N89°44'38"E along the South line of Lot 47, 110.00 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;
8. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot S described as: Beginning at the Southwest corner of Lot 83, thence S00°15'22"E, 10.00 feet, thence N89°44'38"E, 100.00 feet; thence S00°15'22"E, 38.62 feet to the North line of Lot

82; thence N89°44'38"E along said North line, 10.00 feet to the Northeast corner of Lot 82; thence N00°15'22"W along the East line of Outlot S, 48.62 feet to the Southeast corner of Lot 83; thence S89°44'38"W along the South line of Lot 83, 110.00 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;

9. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot S described as: Beginning at the Northwest corner of Lot 76, thence S48°03'52"W, 10.00 feet, thence S41°56'08"E, 100.00 feet; thence Southwesterly along a 460 foot radius curve concave Northwesterly, 114.76 feet (chord bearing S55°12'41"W, 114.46 feet); thence N26°23'45"W, 100.00 feet; thence Southwesterly along a 360 foot radius curve concave Northwesterly, 10.00 feet (chord bearing S62°48'30"W, 10.00 feet); to the Northeast corner of Lot 75; thence S26°23'45"E along the East line of Lot 75, 110.00 feet to the South line of Outlot S; thence Northeasterly along said South line along a 470 foot radius curve concave Northwesterly, 127.47 feet (chord bearing N55°50'04"E, 127.08 feet); thence N48°03'52"E along said South line, 13.78 feet to the Southwest corner of Lot 76; thence N41°56'08"W along the West line of Lot 76, 110.00 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; and
10. A ten foot (10') strip of land to be used for Public Utility Easement located in Outlot R described as: Beginning at the Southwest corner of Lot 58, thence S48°03'52"W, 10.00 feet, thence N41°56'08"W, 100.00 feet; thence S48°03'52"W, 14.77 feet; thence Southwesterly along a 540 foot radius curve concave Northwesterly, 27.20 feet to the East line of Lot 59 (chord bearing S50°56'53"W, 54.33 feet); thence N21°08'33"W along said East line, 10.36 feet to the North line of Outlot R; thence Northeasterly along said North line on a 530 foot radius curve concave Northwesterly, 50.66 feet (chord bearing N50°48'10"E, 50.64 feet); thence N48°03'52"E along said North line, 24.77 feet to the Westerly corner of Lot 58, thence S41°56'08"E along said Westerly line, 110.00 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, replacing, enlarging, inspecting and maintaining various public utilities, including, but not limited to, natural gas, water, telephone and sewer, 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

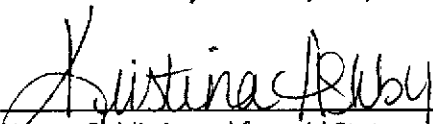
By: 
Dan Dutcher, its Vice President

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