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 Fee Amt: \$24.00 Page 1 of 4
 Revenue Tax: \$0.00
 Polk County Iowa
 JULIE M. HAGGERTY RECORDER
 File# 2011-00014322

BK **13555** PG **787-790**

RETURN TO:

Prepared By and when recorded return to: Jennifer Drake, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, Iowa 50266-2520 (515) 280-2057

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 ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 9 and the South 5 feet, parallel and adjacent to the South line of Lot 10, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
2. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 10 and the South 5 feet, parallel and adjacent to the South line of Lot 11, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
3. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 11 and the South 5 feet, parallel and adjacent to the South line of Lot 12, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
4. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 12 and the South 5 feet, parallel and adjacent to the South line of Lot 13, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.

5. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 13 and the South 5 feet, parallel and adjacent to the South line of Lot 14, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
6. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 14 and the South 5 feet, parallel and adjacent to the South line of Lot 15, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
7. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 15 and the South 5 feet, parallel and adjacent to the South line of Lot 16, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
8. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the North 5 feet, parallel and adjacent to the North line of Lot 16 and the South 5 feet, parallel and adjacent to the South line of Lot 17, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2.
9. A ten foot (10') strip of land to be used for Surface Water Flowage Easement located in the West 5 feet, parallel and adjacent to the West line of Lot 39 and the East 5 feet, parallel and adjacent to the East line of Lot 40, all in the Official Plat of Tuscany Plat 2, now included in and forming a part of the City of Altoona, Polk County, Iowa, more particularly shown on said Tuscany Plat 2,

(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 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 29th day of July, 2010.

TUSCANY RESERVE, LLC

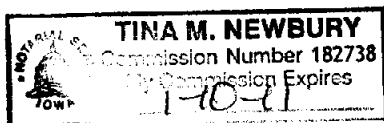
By: Hubbell Realty Company, its Managing Member

By: *Joseph F. Pietruszynski*
Joseph F. Pietruszynski, Vice President

By: *Jennifer L. Drake*
Jennifer L. Drake, Assistant Secretary

STATE OF IOWA, COUNTY OF DALLAS) ss:

This instrument was acknowledged before me on July 29th, 2010 by Joseph F. Pietruszynski 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.



Tina M. Newbury
Notary Public in and for said State