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CJA



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Kind: RESTRICTIVE COVENANT
Recorded: 11/16/2016 at 12:53:27 PM
Fee Amt: \$17.00 Page 1 of 3
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2016-00045286

BK 16272 PG 189-191

RETURN TO:

Prepared by and return to: Jennifer Schumann, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, IA 50266, (515) 280-20509

SPACE ABOVE THIS LINE FOR RECORDER

**THIRD MODIFICATION OF
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
APPLICABLE TO TUSCANY
ALTOONA, POLK COUNTY, IOWA**

THIS THIRD MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO TUSCANY, ALTOONA, POLK COUNTY, IOWA is made this 7 day of November, 2016, by **TUSCANY RESERVE, LLC**, ("Declarant"), an Iowa limited liability company.

WHEREAS, Declarant, as owner of Tuscany as defined in Section 1.02(m) thereof, subjected Tuscany to that certain Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscany, Altoona, Polk County, Iowa, dated July 2, 2008, and filed for record in the Office of the Recorder for Polk County, Iowa on December 10, 2008, in Book 12850 beginning at Page 219, as amended by the First Modification of Declaration of Covenants, Conditions, Easements and Restrictions recorded on August 28, 2012 in Book 14413, Page 798 and further amended by Second Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscany Altoona, Polk County, Iowa recorded on April 1, 2016 in Book 15945, Page 72 (collectively referred to as the "Declaration");

WHEREAS, Declarant reserved the rights in Section 6.12 of Article VI of the Declaration to amend the Declaration;

WHEREAS, Declarant desires to amend Section 1.02(m) of Article I to reflect the replatting of property subject to the Declaration;

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Article I, Section 1.02(m) of the Declaration is hereby deleted in its entirety and a new Section 1.02(m) is substituted in lieu thereof as follows:

"(m) **"Tuscany"** shall mean Lots 1 through 123 and Outlots R, S, T, U, V, and W of Tuscany Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, any single-family lots or open space outlots hereafter created in Outlot X of Tuscany Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa,

Lots 1 through 43, Outlot W and Outlot Z of Tuscany Plat 2 an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, and Lot 1 through 35 and Outlot Z of Tuscany Plat 3, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, except that Tuscany shall not include that property described as Parcel 2016-4, as recorded in Polk County Records at Book 15905 Page 184, being located in Outlot X of Tuscany Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, together with all additional real estate which is hereafter made subject to this Declaration pursuant to one or more amendments to this Declaration, including all lots and outlots, except streets, parks and other lots, if any, conveyed to the City (as defined in Section 1.02(d)), developed in any plats of any part of the foregoing described real estate or in any plats of any part of any additional property which is hereafter made subject to this Declaration pursuant to one or more amendments to this Declaration, and any replats of any portions of any of said plats or parcels, all together with all easements and servient estates appurtenant thereto, and subject to (1) zoning and other applicable building ordinances, (2) easements, covenants and restrictions of record."

- 2. Except as expressly modified by this Third Modification of the Declaration, all of the terms, conditions, easements, restrictions and provisions of the Declaration continue and remain in full force and effect.

Dated this 7 day of November, 2016.

TUSCANY RESERVE, LLC
By: **Hubbell Realty Company, Managing Member**

By: 

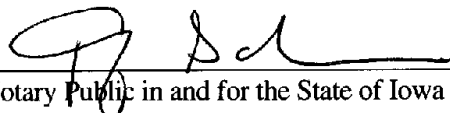
Joe Pietruszynski, Vice President

By: 

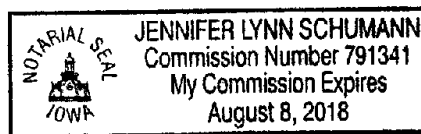
Ashley Aust, Secretary

STATE OF IOWA)
) SS.
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 7 day of November, 2016 by Joe Pietruszynski and Ashley Aust, as the Vice President and Secretary, respectively, of **Hubbell Realty Company**, the managing member of **TUSCANY RESERVE, LLC**, an Iowa limited liability company, on behalf of whom this instrument was executed.



Notary Public in and for the State of Iowa

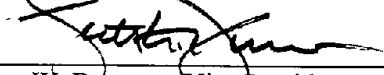


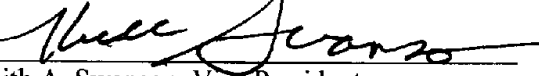
MORTGAGEE'S CONSENT AND SUBORDINATION

KNOW ALL MEN BY THESE PRESENTS: that, **First National Bank of Omaha** ("FNBO") is the present owner of the Mortgagee's interest in that certain Mortgage, Security Agreement and Assignment of Rents, granted by Tuscany Reserve, LLC, an Iowa limited liability company, as Mortgagor, to FNBO, as Mortgagee, October 31, 2007, and filed for record in the Office of the Recorder for Polk County, Iowa on November 1, 2007, in Book 12433 at Page 36 (the "Mortgage"), which Mortgage creates a lien on portions of Tuscany. FNBO hereby consents to the within and foregoing Third Modification of the Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscany, Altoona, Polk County, Iowa, (the "Declaration"), and agrees that the lien of its above-described Mortgage is subordinate to the easements and appurtenant rights created in the Declaration.

Dated this 4th day of November, 2016.

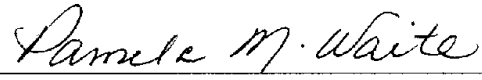
FIRST NATIONAL BANK OF OMAHA

By: 
Scott W. Damrow, Vice President

By: 
Keith A. Swanson, Vice President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 4th day of November, 2016, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Scott W. Damrow and Keith A. Swanson, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Vice President of **First National Bank of Omaha**.


Notary Public in and for said State

